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Contents

Federal Register

Vol. 88, No. 13

Friday, January 20, 2023

Agriculture Department
See Rural Business-Cooperative Service

Army Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3723

Census Bureau
NOTICES
Meetings:
2020 Census Tribal Consultation, 3710–3711

Centers for Disease Control and Prevention
NOTICES
Meetings, 3742–3743

Coast Guard
RULES
Safety Zone:
Coast Guard PSU-312 Training Exercise South Bay, San Francisco Bay, San Francisco, CA, 3657–3659

Commerce Department
See Census Bureau
See International Trade Administration
See National Telecommunications and Information Administration

Commodity Futures Trading Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3721–3723
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Large Trader Reports, 3720–3721

Defense Department
See Army Department
See Engineers Corps
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3723–3727
Meetings:
Board of Regents, Uniformed Services University of the Health Sciences, 3725–3726
Defense Business Board, 3728–3729

Drug Enforcement Administration
NOTICES
Importer, Manufacturer or Bulk Manufacturer of Controlled Substances; Application, Registration, etc.:
Bulk Manufacturer of Marihuana, Soo Labs II, Inc., 3764
Kinetochem, LLC, 3761–3762
Navinta, LLC, 3763
Noramco, 3763
Siegfried USA, LLC, 3762
VA Cooperative Studies Program, 3762

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Cash Management Contract URL Collection, 3732

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3732–3733

Engineers Corps
NOTICES
National Wetland Plant List, 3729–3731
Water Resources Development Act Comment Period and Stakeholder Sessions, 3729

Environmental Protection Agency
RULES
Pesticide Tolerance; Exemptions, Petitions, Revocations, etc.:
Fluridone, 3664–3668
NOTICES
Environmental Impact Statements; Availability, etc.:
Weekly Receipt, 3736–3737

Federal Aviation Administration
RULES
Airworthiness Directives:
Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.) Turboshaft Engines, 3629–3634
PROPOSED RULES
Airworthiness Directives:
Airbus SAS Airplanes, 3678–3680

Federal Communications Commission
RULES
Limits on Exempted Calls under the Telephone Consumer Protection Act, 3668–3677
PROPOSED RULES
Infrastructure Investment and Jobs Act:
Prevention and Elimination of Digital Discrimination, 3681–3704
Television Broadcasting Services:
Roanoke, VA, 3680–3681
NOTICES
Wireline Competition Bureau Announces New Docket for Use in North American Numbering Council Filings, 3737

Federal Election Commission
NOTICES
Public Hearing, 3737

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 3733–3734
Designation of Staff as Non-Decisional:
BP America, Inc.; BP Corp. North America, Inc.; BP America Production Co.; BP Energy Co., 3735

Environmental Impact Statements; Availability, etc.:
Alliance Pipeline, LP; Three Rivers Interconnection Project, 3735–3736
Filing:
Natural Gas Intelligence, 3735
Meetings:
EcoElectrica, LP; Technical Conference, 3736
Waiver Period for Water Quality Certification Application:
Black Canyon Bliss, LLC, 3735

Federal Railroad Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3771–3773

Federal Trade Commission
NOTICES
Jurisdictional Thresholds:
Clayton Act, 3742
Proposed Consent Agreement:
Prudential Security, Inc., et al., 3737–3742

Federal Transit Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Bus and Bus Facilities Program, 3775–3776
Enhanced Mobility of Seniors and Individuals with Disabilities and Nonurbanized Area Formula Program, 3774–3775
National Transit Asset Management System, 3776–3777
State of Good Repair Program, 3773–3774

Fish and Wildlife Service
NOTICES
Endangered and Threatened Species:
Recovery Permit Applications, 3754–3755

Food and Drug Administration
RULES
Medical Devices:
Gastroenterology-Urology Devices; Classification of the Computerized Behavioral Therapy Device for Treating Symptoms of Gastrointestinal Conditions, 3634–3636
Ophthalmic Devices; Classification of the Intense Pulsed Light Device for Managing Dry Eye, 3636–3638
Radiological Health:
Records and Reports for Radiation Emitting Electronic Products; Performance Standards for Diagnostic X-ray, Laser, and Ultrasonic Products, 3638–3654
NOTICES
Final Debarment Order:
Linda Godding, 3747–3749
Mark Godding, 3744–3746
Guidance:
Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs, 3743–3744
Mpox: Development of Drugs and Biological Products, 3746–3747

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Earth Mapping Resources Initiative Competitive Cooperative Agreement Program with State Geological Surveys, 3755–3757

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Multifamily Energy Assessment, 3754
Public Housing Operating Subsidy—Appeals, 3753–3754

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Emulsion Styrene-Butadiene Rubber from Mexico, 3711–3712
High Pressure Steel Cylinders from the People's Republic of China, 3713
Prestressed Concrete Steel Wire Strand from the Republic of Turkey, 3714
Meetings:
Investment Advisory Council, 3712–3713

International Trade Commission
NOTICES
Meetings; Sunshine Act, 3761

Justice Department
See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office
RULES
International Terrorism Victim Expense Reimbursement Program, 3654–3657

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
North Dakota Field Office; Resource Management Plan, 3757–3758
Proposed Lava Ridge Wind Project in Jerome, Lincoln, and Minidoka Counties, ID, 3759–3760
Plats of Survey:
Idaho, 3758

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 3764–3765

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Evaluation of the Enhancing Diversity of the NIH-Funded Workforce Program (National Institute of General Medical Sciences), 3750–3751
Licenses; Exemptions, Applications, Amendments etc.:
Small Cell Lung Cancer Subtyping Using Plasma Cell-Free Nucleosomes, 3749–3750
Meetings:
National Center for Advancing Translational Sciences, 3751
National Institute of Mental Health, 3749

National Park Service
RULES
Mount Rainier National Park; Fishing, 3659–3664
NOTICES
National Register of Historic Places:
Pending Nominations and Related Actions, 3760–3761

National Science Foundation
NOTICES
Meetings:
Astronomy and Astrophysics Advisory Committee, 3765
Proposal Review Panel for Materials Research, 3766

National Telecommunications and Information Administration
NOTICES
Request for Comments:
Privacy, Equity, and Civil Rights, 3714–3720

Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3731–3732

Presidential Documents
ADMINISTRATIVE ORDERS
National Defense Authorization Act for Fiscal Year 2022; Delegation of Authority Under Section 6501(b)(2) (Memorandum of January 17, 2023), 3907–3909

Rural Business-Cooperative Service
NOTICES
Funding Opportunity:
Rural Innovation Stronger Economy Grant Program for Fiscal Year 2023, 3705–3710

Securities and Exchange Commission
PROPOSED RULES
Disclosure of Order Execution Information, 3786–3905
NOTICES
Meetings; Sunshine Act, 3766

Small Business Administration
NOTICES
Disaster or Emergency Declaration and Related Determination:
Washington; Public Assistance Only, 3766

State Department
NOTICES
Charter Renewal:
Advisory Committee on Historical Diplomatic Documentation, 3767

Substance Abuse and Mental Health Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 3751–3753

Tennessee Valley Authority
NOTICES
Environmental Impact Statements; Availability, etc.:
Cumberland Fossil Plant Retirement, 3767–3771

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Federal Transit Administration

Veterans Affairs Department
RULES
Emergent Suicide Care, 3664
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Adaptive Sport Grant Application, 3779
Applications and Appraisals for Health Care Positions and Trainees, 3781–3782
Authorization to Disclose Personal Information to a Third Party, 3777–3778
Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program, 3779–3781
VA MATIC Enrollment/Change, 3777
Meetings:
Advisory Committee on the Readjustment of Veterans, 3782–3783
Veterans and Community Oversight and Engagement Board, 3778–3779

Separate Parts In This Issue

Part II
Securities and Exchange Commission, 3786–3905

Part III
Presidential Documents, 3907–3909

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Memorandums:

Memorandum of January 17, 2023 3909

14 CFR

39 (2 documents) 3629, 3631

Proposed Rules:

39 3678

17 CFR

Proposed Rules:

242 3786

21 CFR

876 3634

886 3636

1000 3638

1002 3638

1010 3638

1020 3638

1030 3638

1050 3638

28 CFR

94 3654

33 CFR

165 3657

36 CFR

7 3659

38 CFR

17 3664

40 CFR

180 3664

47 CFR

64 (2 documents) 3668

Proposed Rules:

Ch. I 3681

73 3680

Rules and Regulations

Federal Register
Vol. 88, No. 13
Friday, January 20, 2023

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0021; Project Identifier MCAI–2022–01618–E; Amendment 39–22306; AD 2023–01–12]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.) Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Safran Helicopter Engines, S.A. (Safran) Arriel 1C, Arriel 1C1, and Arriel 1C2 model turboshaft engines. This AD was prompted by reports of false engine fire warnings. This AD requires replacing the affected fire detectors, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected fire detectors. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 6, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 6, 2023.

The FAA must receive comments on this AD by March 6, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0021; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–0021.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; email: *kevin.m.clark@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–2023–0021; Project Identifier MCAI–2022–01618–E'' 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 Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0256, dated December 19, 2022 (EASA AD 2022–0256) (also referred to as the MCAI), to correct an unsafe condition on all Safran Arriel 1C, Arriel 1C1, and Arriel 1C2 model turboshaft engines. The MCAI states that there were reports of false engine fire warnings. The subsequent investigation results identified a manufacturing non-compliance on the fire detectors, which caused a shift of the detection threshold towards temperature values that are lower than specified, potentially leading to a false engine fire warning. When two engines on a helicopter are fitted with an affected part, an engine fire warning could occur on both engines during the same flight. This condition, if not addressed, could lead to commanded in-flight engine shut-down, possibly

resulting in damage to the helicopter and reduced control of the helicopter.

The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0021.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0256, which specifies procedures for replacing affected fire detectors. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by the aviation authority of another country and are 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 described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2022–0256, except for any differences identified as exceptions in the regulatory text of this AD. This AD also prohibits the installation of affected fire detectors.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0256 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0256 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0256 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0256. Service information required by EASA AD 2022–0256 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0021 after this AD is published.

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 foregoing notice and comment prior to adoption of this rule because fire detectors that do not conform to the type design could lead to false engine fire warnings. Safran was informed of three occurrences of illumination of the engine fire alarm without confirmed fire (untimely illumination) on airframes equipped with affected fire detectors. False engine fire warnings are an unsafe condition requiring urgent corrective action because, if a helicopter is equipped with two engines with an affected fire detector installed, an engine fire warning could occur on both engines during the same flight. This unsafe condition, if not addressed, could lead to commanded in-flight engine shut-down, possibly resulting in damage to the helicopter and reduced control of the helicopter. Replacement of the fire detectors must be accomplished within 30 flight hours or 60 days from the effective date of this AD, whichever occurs first. 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 forego notice and comment.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 30 engines installed on helicopters 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
Replace fire detectors	1 work-hour × $85 per hour = $85	$1,800	$1,885	$56,550

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:

2023–01–12 Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.): Amendment 39–22306; Docket No. FAA–2023–0021; Project Identifier MCAI–2022–01618–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 6, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Safran Helicopter Engines, S.A. (Type Certificate previously held by Turbomeca, S.A.) Arriel 1C, Arriel 1C1, and Arriel 1C2 model turboshaft engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by reports of false engine fire warnings. The FAA is issuing this AD to prevent false engine fire warnings. The unsafe condition, if not addressed, could lead to commanded in-flight engine shut-down, possibly resulting in damage to the helicopter and reduced control of the helicopter.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with European Union Aviation Safety Agency (EASA) AD 2022–0256, dated December 19, 2022 (EASA AD 2022–0256).

(h) Exceptions to EASA AD 2022–0256

(1) Where EASA AD 2022–0256 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0256.

(3) Although the service information referenced in EASA AD 2022–0256 specifies to discard any removed fire detectors, this AD requires removing those parts from service.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0256 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0256, dated December 19, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0256, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(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 January 13, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–01113 Filed 1–18–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0020; Project Identifier MCAI–2022–01566–E; Amendment 39–22305; AD 2023–01–11]

RIN 2120–AA64

Airworthiness Directives; Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.) Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Safran Helicopter Engines, S.A. (Safran) Makila 1A and Makila 1A1 model turboshaft engines. This AD was prompted by reports of false engine fire warnings. This AD requires replacing the affected fire detectors, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected fire detectors. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 6, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 6, 2023.

The FAA must receive comments on this AD by March 6, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0020; 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 street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–0020.

FOR FURTHER INFORMATION CONTACT: Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; email: *kevin.m.clark@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–2023–0020; Project Identifier MCAI–2022–01566–E'' 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 Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0244, dated December 8, 2022 (EASA AD 2022–0244), (also referred to as the MCAI), to correct an unsafe condition for all Safran Makila 1A and Makila 1A1 model turboshaft engines. The MCAI states that there were reports of false engine fire warnings. The subsequent investigation results identified a manufacturing non-compliance on the fire detectors, which caused a shift of the detection threshold towards temperature values that are lower than specified, potentially leading to a false engine fire warning. When two engines on a helicopter are fitted with an affected part, an engine fire warning could occur on both engines during the same flight. This condition, if not addressed, could lead to commanded in-flight engine shut-down, possibly resulting in damage to the helicopter and reduced control of the helicopter.

The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0020.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0244, which specifies procedures for replacing affected fire detectors. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

These products have been approved by the aviation authority of another country and are 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 described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2022–0244, except for any differences identified as exceptions in the regulatory text of this AD. This AD also prohibits the installation of affected fire detectors.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0244 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0244 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0244 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance

Time(s)'' in EASA AD 2022–0244. Service information required by EASA AD 2022–0244 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0020 after this AD is published.

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 foregoing notice and comment prior to adoption of this rule because fire detectors that do not conform to the type design could lead to false engine fire warnings. Safran was informed of three occurrences of illumination of the engine fire alarm without confirmed fire (untimely illumination) on airframes equipped with affected fire detectors. False engine fire warnings are an unsafe condition requiring urgent corrective action because, if a helicopter is equipped with two engines with an affected fire detector installed, an engine fire warning could occur on both engines during the same flight. This unsafe condition, if not addressed, could lead to commanded in-flight engine shut-down, possibly resulting in damage to the helicopter and reduced control the helicopter. Replacement of the fire detectors must be accomplished within 30 flight hours or 60 days from the effective date of this AD, whichever occurs first. 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 forego notice and comment.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 1 engine installed on a helicopter 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
Replace fire detectors	1 work-hour × $85 per hour = $85	$1,800	$1,885	$1,885

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:

2023–01–11 Safran Helicopter Engines, S.A. (Type Certificate Previously Held by Turbomeca, S.A.): Amendment 39–22305; Docket No. FAA–2023–0020; Project Identifier MCAI–2022–01566–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 6, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Safran Helicopter Engines, S.A. (Type Certificate previously held by Turbomeca, S.A.) Makila 1A and Makila 1A1 model turboshaft engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7200, Engine (Turbine/Turboprop).

(e) Unsafe Condition

This AD was prompted by reports of false engine fire warnings. The FAA is issuing this AD to prevent false engine fire warnings. The unsafe condition, if not addressed, could lead to commanded in-flight engine shut-down, possibly resulting in damage to the helicopter and reduced control of the helicopter.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with European Union Aviation Safety Agency (EASA) AD 2022–0244, dated December 8, 2022 (EASA AD 2022–0244).

(h) Exceptions to EASA AD 2022–0244

(1) Where EASA AD 2022–0244 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0244.

(3) Although the service information referenced in EASA AD 2022–0244 specifies to discard any removed fire detectors, this AD requires removing those parts from service.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0244 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

For more information about this AD, contact Kevin Clark, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7088; email: *kevin.m.clark@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0244, dated December 8, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0244, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(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 January 13, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–01101 Filed 1–18–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. FDA–2022–N–3255]

Medical Devices; Gastroenterology-Urology Devices; Classification of the Computerized Behavioral Therapy Device for Treating Symptoms of Gastrointestinal Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the computerized behavioral therapy device for treating symptoms of gastrointestinal conditions 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 computerized behavioral therapy device for treating symptoms of gastrointestinal conditions' 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 January 20, 2023. The classification was applicable on November 25, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Cole, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2536, Silver Spring, MD 20993–0002, 301–796–8587, *Stephanie.Cole@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the computerized behavioral therapy device for treating symptoms of gastrointestinal conditions 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 April 30, 2020, FDA received Mahana Therapeutics, Inc.'s request for De Novo classification of the Parallel. 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 25, 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 876.5960.[1] We have named the generic type of device computerized behavioral therapy device for treating symptoms of gastrointestinal conditions, and it is identified as a prescription device intended to provide a computerized version of condition-specific therapy as an adjunct to standard of care treatments to patients with gastrointestinal conditions.

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—COMPUTERIZED BEHAVIORAL THERAPY DEVICE FOR TREATING SYMPTOMS OF GASTROINTESTINAL CONDITIONS RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Worsening of condition due to device providing ineffective treatment	Clinical data, and Labeling.
Delayed access to treatment due to device software failure	Software verification, validation, and hazard analysis, and Labeling.
Ineffective treatment due to use error/improper use of device	Usability assessment, and Labeling.
Treatment results in anxiety, depressed mood, depression, mental disorder (unspecified), stress or suicidal ideation.	Clinical data, 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. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, computerized behavioral therapy devices for treating symptoms of gastrointestinal conditions are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

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 parts 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 876

Medical devices.

[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.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

■ 1. The authority citation for part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 876.5960 to subpart F to read as follows:

§ 876.5960 Computerized behavioral therapy device for treating symptoms of gastrointestinal conditions.

(a) *Identification.* A computerized behavioral therapy device for treating symptoms of gastrointestinal conditions is a prescription device intended to provide a computerized version of condition-specific therapy as an adjunct to standard of care treatments to patients with gastrointestinal conditions.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical data must be provided to fulfill the following:

(i) Describe a model of therapy for the indicated gastrointestinal conditions;

(ii) Validate the model of therapy as implemented by the device using a clinically defined endpoint; and

(iii) Evaluate all adverse events.

(2) Software must be described in detail in the software requirements specification and software design specification. Software verification, validation, and hazard analysis must be performed. Software documentation must demonstrate that the device effectively implements the behavioral therapy model.

(3) Usability assessment must demonstrate that the intended user(s) can safely and correctly use the device.

(4) Labeling:

(i) Labeling must include instructions for use, including images that demonstrate how to interact with the device;

(ii) Patient and physician labeling must list the minimum operating system requirements that support the software of the device;

(iii) Patient and physician labeling must include a warning that the device is not intended for use in lieu of a standard therapeutic intervention or to represent a substitution for the patient's medication;

(iv) Patient and physician labeling must include a warning to seek medical care if a patient has feelings or thoughts of harming themselves or others; and

(v) Physician and patient labeling must include a summary of the clinical testing with the device.

Dated: January 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–01048 Filed 1–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 886

[Docket No. FDA–2022–N–3256]

Medical Devices; Ophthalmic Devices; Classification of the Intense Pulsed Light Device for Managing Dry Eye

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the intense pulsed light device for managing dry eye 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 intense pulsed light device for managing dry eye'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 January 20, 2023. The classification was applicable on February 23, 2021.

FOR FURTHER INFORMATION CONTACT: Arkady Kaplan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1568, Silver Spring, MD 20993–0002, 301–796–6365, *Morris.Kaplan@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the intense pulsed light device for managing dry eye 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 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). 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 April 20, 2020, FDA received Lumenis's request for De Novo classification of the Lumenis Stellar M22. 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 February 23, 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 886.5201.[1] We have named the generic type of device intense pulsed light device for managing dry eye, and it is identified as a prescription device intended for use in the application of intense pulsed light therapy to the skin. The device is used in patients with dry eye disease due to meibomian gland dysfunction, also known as evaporative dry eye or lipid deficiency dry eye.

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—INTENSE PULSED LIGHT DEVICE FOR MANAGING DRY EYE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Tissue damage due to overheating	Thermal safety assessment, Software verification, validation, and hazard analysis, and Labeling.
Tissue damage or loss of vision due to light radiation	Clinical performance testing, and Labeling.
Adverse tissue reaction	Biocompatibility evaluation.
Electrical shock or burn	Thermal safety assessment, Electrical safety testing, Software verification, validation, and hazard analysis, and Labeling.
Interference with other devices	Electromagnetic compatibility testing; Software verification, validation, and hazard analysis; and Labeling.
Pain or discomfort	Clinical performance testing, and Labeling.
Failure to mitigate dry eye signs and/or symptoms	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. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, intense pulsed light device for managing dry eye is/are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

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 the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' 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 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

[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 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.

of Food and Drugs, 21 CFR part 886 is amended as follows:

PART 886—OPHTHALMIC DEVICES

■ 1. The authority citation for part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 886.5201 to subpart F to read as follows:

§ 886.5201 Intense pulsed light device for managing dry eye.

(a) *Identification.* An intense pulsed light device for managing dry eye is a prescription device intended for use in the application of intense pulsed light therapy to the skin. The device is used in patients with dry eye disease due to meibomian gland dysfunction, also known as evaporative dry eye or lipid deficiency dry eye.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must evaluate adverse events and improvement of dry eye signs and symptoms under anticipated conditions of use.

(2) Thermal safety assessment in a worst-case scenario must be performed to validate temperature safeguards.

(3) Performance testing must demonstrate electrical safety and electromagnetic compatibility (EMC) of the device in the intended use environment.

(4) Software verification, validation, and hazard analysis must be performed.

(5) The patient-contacting components of the device must be demonstrated to be biocompatible.

(6) Physician and patient labeling must include:

(i) Device technical parameters;

(ii) A summary of the clinical performance testing conducted with the device;

(iii) A description of the intended treatment area location;

(iv) Warnings and instructions regarding the use of safety-protective eyewear for patient and device operator;

(v) A description of intense pulse light (IPL) radiation hazards and protection for patient and operator;

(vi) Instructions for use, including an explanation of all user interface components; and

(vii) Instructions on how to clean and maintain the device and its components.

Dated: January 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–01049 Filed 1–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1000, 1002, 1010, 1020, 1030 and 1050

[Docket No. FDA–2018–N–3303]

RIN 0910–AH65

Radiological Health Regulations; Amendments to Records and Reports for Radiation Emitting Electronic Products; Amendments to Performance Standards for Diagnostic X-ray, Laser, and Ultrasonic Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is amending and repealing parts of the radiological health regulations covering recommendations for radiation protection during medical procedures, certain records and reporting for electronic products, and performance standards for diagnostic x-ray systems and their major components, laser products, and ultrasonic therapy products. The Agency is taking this action to clarify and update the regulations to reduce regulatory requirements that are outdated and duplicate other means to better protect the public health against harmful exposure to radiation emitting electronic products and medical devices.

DATES: This rule is effective February 21, 2023.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert Ochs, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3680, Silver Spring, MD 20993, 301–796–6661, email: *Robert.Ochs@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
  A. Purpose of the Final Rule
  B. Summary of Major Provisions of the Final Rule
  C. Legal Authority
  D. Costs and Benefits of the Final Rule
II. Table of Abbreviations/Commonly Used Acronyms
III. Background
  A. Need for Amendments and Repeal of Certain Radiological Health Regulations
  B. Summary of Comments to the Proposed Rule
  C. General Overview of Final Rule
IV. Legal Authority
V. Comments to the Proposed Rule and FDA's Responses
  A. General Comments on the Proposed Rule
  B. Radiation Safety Recommendations/Standards Comments
  C. General Format and Edit Comments
  D. Records and Reports Comments
  E. Reports of Assembly, Forms, and Guidance Comments
  F. Accidental Radiation Occurrences Comments
  G. Laser Comments
VI. Effective Date
VII. Economic Analysis of Impacts
  A. Introduction
  B. Summary of Costs and Benefits
  C. Summary of Regulatory Flexibility Analysis
VIII. Analysis of Environmental Impact
IX. Paperwork Reduction Act of 1995
X. Federalism
XI. Consultation and Coordination With Indian Tribal Governments
XII. References

I. Executive Summary

A. Purpose of the Final Rule

This final rule amends and repeals certain regulations for radiation emitting electronic products and medical devices because the FDA has identified the regulations as being outdated and duplicative of other means for reducing radiation exposure to the public. The Agency is updating the regulations to amend or repeal regulations that are outdated and otherwise clarify requirements for protecting the public health against radiation exposure from specific electronic products and medical devices. The regulations being finalized for amendment or repeal are the radiation protection recommendations for specific uses, records and reporting requirements for electronic products, applications for variances, and performance standards for diagnostic x-ray systems and their major components, laser products, and ultrasonic therapy products.

B. Summary of the Major Provisions of the Final Rule

This final rule updates FDA's radiological health regulations to amend or repeal the following provisions:

- Repeal the radiation protection recommendations that have become outdated and unnecessary;
- Removing or reducing some of the annual reports and test record

requirements that are unnecessary or may be duplicative of other reporting requirements by FDA and State regulators;

- Revise the timing for submissions of reporting requirements for accidental radiation occurrences (AROs) to provide for quarterly reporting for AROs that are not associated with a death or serious injury;
- Amend the applications for variances processes to no longer require a manufacturer to submit two additional copies with the original documents;
- Amend the regulations to no longer require assemblers who install certified components of diagnostic x-ray systems to submit reports of assembly to the Agency;
- Amend the reporting requirements for manufacturers that incorporate a certified laser product to reduce reporting that is considered duplicative under certain conditions; and
- Repeal the performance standard for ultrasonic products because it is limited to a subset of physical therapy devices with an outdated standard.

The Agency believes the amendments and repeals will help to ensure that the requirements for radiation emitting electronic products and devices will continue to protect the public health and safety while reducing regulatory burdens.

C. Legal Authority

FDA is issuing this final rule under the same authority under which FDA initially issued these regulations, the device and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act). FDA has the authority under the FD&C Act to amend the performance standard for diagnostic x-ray systems and their major components, amend the performance standard for laser products, and repeal radiation protection recommendations and the performance standard for ultrasonic therapy products, as provided for in this rule.

D. Costs and Benefits of the Final Rule

This final rule updates FDA's radiological health regulations by amending parts of the general provisions including records and reporting requirements for electronic products. Benefits are estimated in terms of cost savings. Industry cost savings are derived by estimating the savings in reduced labor resulting from the reduction in reporting, recordkeeping, and third-party disclosure requirements. Cost savings to FDA result from the reduction in labor hours required to review reports. The total present value cost savings over a 20-year time period are $69.71 million at a 7 percent discount rate and $97.89 million at a 3 percent discount rate. Annualized total cost savings are $6.58 million. We estimate the costs to read the rule for all reporting respondents. The present value costs are $1.60 million and the annualized costs calculated over a 20-year time period are $0.14 million at a 7 percent discount rate and $0.10 million at a 3 percent discount rate.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation	What it means
ARO	Accidental Radiation Occurrences.
CDRH	Center for Devices and Radiological Health.
CFR	Code of Federal Regulations.
CRCPD	Conference of Radiation Control Program Directors.
CT	Computerized Tomography.
EO	Executive Order.
EPRC	Electronic Product Radiation Control.
EPA	Environmental Protection Agency.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FDA, Agency or we	Food and Drug Administration.
ICRP	International Commission on Radiological Protection.
IEC	International Electrotechnical Commission.
ISO	International Organization for Standardization.
MDR	Medical Device Reporting.
NCRP	National Council on Radiation Protection and Measurements.
OMB	Office of Management and Budget.
PRA	Paperwork Reduction Act of 1995.
TEPRSSC	Technical Electronic Product Radiation Safety Standards Committee.

III. Background

FDA recognizes that some records and reporting requirements for some radiation emitting electronic products and medical devices are not necessary to protect the public health and safety in compliance with the Electronic Product Radiation Control (EPRC) program (see sections 532, 534(a)(1), and 537(b) of the FD&C Act (21 U.S.C. 360ii, 360kk(a)(1), and 360nn(b))). In addition, some of the recommended protections against radiation and performance standards are now outdated and redundant to other Federal and State requirements, including professional guidelines that apply to the education and licensing of practitioners, as well numerous current radiation guidance documents and industry standards that practitioners and industry rely on to protect the public health and safety. For example, there are more recent standards that industry and FDA can rely on for the safety of ultrasonic therapy devices for physical medicine, for instance the International Electrotechnical Commission (IEC) standards 60601–2–5, *Medical electrical equipment—Part 2–5: Particular requirements for the basic safety and essential performance of ultrasonic physiotherapy equipment* (August 6, 2013) and 61689, *Ultrasonics—Physiotherapy systems—Field specifications and methods of measurement in the frequency range 0.5 MHz to 5 MHz* (January 30, 2014). FDA also recognizes that submission of certain quarterly reports is unnecessary given certain annual reporting requirements. In addition, the submission of initial product reports for products that are also subject to premarket authorization prior to marketing is duplicative. The Safe Medical Devices Act of 1990 (Pub. L. 101–629), enacted on November 28, 1990, transferred the provisions of the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90–602) (formerly 42 U.S.C. 263b through n(i) *et seq.*) from Title III of the Public Health Service Act to Chapter V, subchapter C of the FD&C Act, EPRC (sections 531–542 of the FD&C Act (21 U.S.C. 360hh–360ss)). Under these provisions, FDA

administers the EPRC program to protect the public health and safety. This authority provides for developing, amending, and administering radiation safety performance standards for electronic products.

FDA is responsible for protecting and promoting the public health regarding electronic product radiation from medical devices and electronic products. Voluntary consensus standards regarding safety and essential performance have been developed and continually improved to increase the safety of these devices and products (sections 514(c) (21 U.S.C. 360d) and 531–542 of the FD&C Act). FDA believes radiation emitting electronic products and devices that comply with Federal standards and Federally-recognized consensus standards, adequately protect the public health and safety and provide a reasonable assurance of safety and effectiveness, as applicable, when properly used by trained personnel, and concern has shifted to minimizing improper uses. FDA, patients, health workers, and industry recognize that medical products that emit radiation should be used only when medically justified to answer a clinical question or to guide treatment of a disease, and that the amount of radiation used should be limited to that necessary to accomplish the clinical task (Refs. 1, 2–4).

In 2010, FDA's Center for Devices and Radiological Health (CDRH) launched an ''Initiative to Reduce Unnecessary Radiation Exposure from Medical Imaging'' (Ref. 3) to protect public health by promoting the appropriate use of radiation and safety features to minimize unnecessary radiation exposure from medical imaging. Through this initiative, FDA collaborates with other agencies and the healthcare professional community to mitigate factors contributing to unnecessary patient exposure to radiation during medical procedures. The range of electronic products marketed today is diverse with regards to radiation emission levels, product complexity, consumer use, and sales volume. The public risk associated with exposure to radiation from these products also varies significantly; however, the risks to patients can be mitigated by medical personnel only performing exams using radiation when necessary to answer a medical question, treat a disease, or guide a procedure (Ref. 4).

In accordance with FDA's directive to carry out the EPRC program (see sections 532, 534(a)(1), and 537(b) of the FD&C Act), FDA prescribes and amends performance standards for electronic products to control the emission of electronic product radiation when necessary to protect the public health and safety. In establishing performance standards consistent with the statute, FDA consulted with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) (section 534(f) of the FD&C Act) (Ref. 5). On October 26, 2016, a TEPRSSC meeting was held and FDA presented, for consultation with TEPRSSC, proposed certain amendments to the regulations for laser, sonic, x-ray, and other radiation emitting products to best align FDA's focus with the public health need and reduce or eliminate standards or reporting that were no longer considered necessary (Ref. 5). FDA also proposed to the TEPRSSC the removal of the ultrasonic therapy performance standard with continuing reliance on medical device review prior to marketing authorization. Items in these amendments have been considered in discussions by TEPRSSC as necessary. Therefore, FDA has determined that the regulatory requirements can be adjusted to take account of the wide range of electronic products currently on the market and focus on products that pose a higher risk to the public.

A. Need for Amendments and Repeal of Certain Radiological Health Regulations

Many of the requirements in our radiological health regulations are over 30 years old. As described below and in the proposed rule (84 FR 12147, April 1, 2019) the final rule amends and repeals certain radiological health regulations to reduce regulatory requirements that are outdated and duplicative. Specifically, this final rule amends parts of the radiological health regulations covering recommendations for radiation protection during medical procedures, certain records and reporting for electronic products, applications for variances, and performance standards for diagnostic x-ray systems and their major components, laser products, and ultrasonic therapy products while still assuring the public health and safety is protected against harmful exposure to radiation emitting electronic products and medical devices.

B. Summary of Comments to the Proposed Rule

In the **Federal Register** of April 1, 2019, FDA published a proposed rule to amend the radiological health regulations (84 FR 12147). The comment period for the proposed rule closed on July 1, 2019. FDA received comments on the proposed rule from several entities including medical device associations, industry, medical and healthcare professional associations, public health advocacy groups, and individuals. While some comments object to particular sections or subsections of the proposed rule, almost all comments voice support for the objective intent of the proposed rule, to amend certain regulations to reduce regulatory burden while continuing to assure protection of the public health and safety against harmful exposure to radiation emitting electronic products and medical devices.

Some comments raise concerns or request clarification regarding:

- repealing the radiation protection recommendations,
- removing or reducing certain records and reporting requirements for electronic products,
- incorporating and expanding the policies described in FDA's Laser Notice 42 to higher powered laser products,
- amending the performance standards for laser products that incorporate certified laser systems,
- information on future technologies and other measures that may reduce or eliminate radiation exposure,
- document retention and responsibilities related to initial, supplemental, abbreviated and annual reports,
- assemblers' responsibilities for maintaining a record of report of assembly on file,
- the tracking and trending analysis related to the requirements for reports on accidental radiation occurrences, and
- additional amendments to performance standards for laser products.

C. General Overview of Final Rule

FDA considered all comments received on the proposed rule and made changes, primarily for clarity and accuracy and to be consistent with the goal of reducing the burden of regulatory requirements for radiation emitting products and medical devices without compromising patient safety. On its own initiative, FDA is also making minor technical changes to improve clarity and consistency and reduce regulatory burden. Based on the comments received on the proposed rule, FDA has made changes from the proposed rule (84 FR 12147) to include the following revisions in the codified section of this final rule:

- Include the word ''accidental'' in the definition for radiation occurrence (§ 1000.3(a)),
- include a footnote in the records and reports table clarifying laser product certification (table 1 in § 1002.1),

• include language of information needed for quarterly reporting of accidental radiation occurrences (§ 1002.20(c)(2)(ii)),
• include a paragraph with language to identify when certification and reporting is duplicative and unnecessary for laser products under § 1040.10 that incorporate a certified laser system (§ 1010.2(e)),
• identify an alternative format for identification of the month and date of the manufacture of an electronic product (§ 1010.3(a)(2)(ii)),
• clarify the options for submissions for applications for variances (§ 1010.4(b)(1)), and
• revise the title and applicability for television receivers that contain a cathode ray tube (§ 1020.10).

FDA also decided on its own initiative to include the following additional amendments to this final rule for clarity and consistency and to reduce regulatory burden:
• remove the requirement for two copies of an application for exemption of warning labels for a microwave oven that are submitted to CDRH and correct the name of the CDRH office to submit a document (§ 1030.10(c)(iv)), and
• clarify and remove the requirement that x-ray assemblers for certified accessory components submit Reports of Assembly (Form FDA 2579) to CDRH (§ 1020.30(d)(2)).

IV. Legal Authority

FDA is issuing this final rule under the same authority under which FDA initially issued these regulations, the device and general administrative provisions of the FD&C Act (21 U.S.C. 321, 351, 352, 360, 360e–360j, 360hh–360ss, 371, 374, and 381). FDA has the authority under section 534 of the FD&C Act to amend the performance standard for diagnostic x-ray systems and their major components, amend the performance standard for laser products, and repeal radiation protection recommendations and the performance standard for ultrasonic therapy products, as provided for in this final rule.

V. Comments on the Proposed Rule and FDA's Responses

We received several sets of comments on the proposed rule by the closure of the comment period, each containing one or more comments on one or more issues. We received comments from medical device associations, industry, medical and healthcare professional associations, public health advocacy groups, and individuals. We describe and respond to the comments in this section of the document. The topics for the comments are grouped based on the common themes identified below. We have grouped similar comments together under the same number so that FDA's responses could be addressed by topic, instead of each comment addressed independently, and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

A. General Comments on the Proposed Rule

(Comment 1) FDA received multiple comments that express support for the proposed rule and the proposals to remove outdated radiation protection recommendations and adjust the regulatory records and reporting requirements based on risk. The comments urged the Agency to maintain vigilance and continue to promote the health and safety of patients and healthcare practitioners.

(Response 1) FDA appreciates the public support for the rule. FDA intends to continue to utilize its regulatory authorities and collaborations with other governmental agencies, non-governmental organizations, and industry, among others, to promote the safe and effective use of radiation to best protect and promote public health.

B. Radiation Safety Recommendations/ Standards Comments

(Comment 2) One comment referenced multiple publications that supported FDA's proposal that the recommendations in § 1000.50 for use of gonad shielding were inconsistent with current scientific evidence and should be removed.

(Response 2) FDA agrees with the recommendation and is removing the recommendations in § 1000.50 in this final rule.

(Comment 3) One comment raised concern that by repealing the radiation protection recommendations, end-users may have difficulty finding, analyzing, and applying the appropriate standards and practices to specific clinical healthcare situations. The comment requested that FDA list the specific regulations that are outdated or duplicative and provide direction as to the appropriate current standards or practice parameters that replace the repealed regulations.

(Response 3) FDA acknowledges the concern but does not believe that repeal of the recommendations will cause difficulty in locating and applying applicable standards and practices. This final rule identifies the § 1000.50 recommendations that are being removed. FDA believes these specific recommendations are outdated and no longer relied upon by healthcare providers. Removing the recommendations eliminates information that is no longer useful. FDA identified recent, consensus recommendations in the proposed rule (Refs. 1, 2, 6–9). FDA continues to recommend that medical professionals also seek continuing education through professional societies to remain current with new technologies, standards, and best practice guidelines.

(Comment 4) Multiple comments recognized the contributions of external stakeholders to develop and incorporate radiation protection into device design, practitioner training, and best practices for standards of care. Comments stated that diagnostic imaging is an important part of the standard of care, and training and continuing education are important so that healthcare professionals know the rules, regulations, safety procedures, and best practices to benefit patients and avoid harm. The comments requested that FDA support and reference the most relevant guidelines for healthcare professionals wherever feasible.

(Response 4) FDA recognizes the importance of training and continuing education for healthcare professionals and will continue to collaborate with, and reference the work of, external organization as appropriate to develop standards. FDA believes professional societies should have the resources and knowledge to provide the most up-to-date guidelines for their members. FDA recognizes the significant and ongoing contributions that external stakeholders, such as the American Association of Physicists in Medicine, the American College of Radiology, the Health Physics Society, the Image Gently Alliance, the International Atomic Energy Agency, the Medical Imaging Technology Alliance, the Society of Interventional Radiology, the World Health Organization, and many others, have made to incorporate radiation protection into device design, practitioner training, and best practices for standards of care. For example, in 2003, the National Council on Radiation Protection and Measurements (NCRP) updated its recommendations on radiation protection in dentistry (Ref. 6). In 2012, the American Dental Association, in conjunction with FDA, updated its selection criteria for dental imaging with guidelines for the frequency of

dental radiographs and radiation exposure recommendations (Ref. 7). In 2014, the Environmental Protection Agency's (EPA) Working Group on Medical Radiation, with active FDA participation, published a document entitled ''Federal Guidance Report No. 14. Radiation Protection Guidance for Diagnostic and Interventional X-Ray Procedures'' (Guidance Report No. 3), which provides comprehensive recommendations for radiation protection to medical and dental facilities (Ref. 1). Because safety procedures and best practices are continuously revised and improved, FDA believes that specifically referencing existing guidelines in the regulations is not appropriate because it may lead to confusion or unintended consequences as practice guidelines continue to be updated.

(Comment 5) One comment acknowledges that professional organizations play a key role in developing guidance for safe use of radiation, but such guidance may not be comprehensive. The comment recommended that FDA define the organizational credentials and processes to guide the development and format of radiation use standards.

(Response 5) FDA disagrees with the recommendation because the EPRC does not provide for defining and enforcing criteria by which standards organizations or professional societies operate (see sections 532, 534(a)(1), and 537(b) of the FD&C Act). FDA's standards program provides FDA with the opportunity to review and rely on appropriately developed standards within the scope of the FD&C Act. FDA actively participates in the development of voluntary standards and guidelines with other organizations. FDA encourages individuals and professional societies to join and participate in the development of safety recommendations and standards to address the diversity of clinical, scientific, and other needs that apply to their profession.

(Comment 6) One comment suggested that one national set of standards, regulations and training requirements for operators is preferable to differences by state or locality. The comment included a specific example that the quality of dental radiography may vary given the lack of national requirements, especially with the introduction of new technologies, such as cone-beam Computerized Tomography (CT). The lack of a national standard may result in different approaches to radiographer training, with the potential for increased radiation exposure to patients. The comment recommended that FDA designate a specific organization as the responsible entity on all aspects of dental imaging including training of all dental personnel who perform dental imaging examinations.

(Response 6) FDA disagrees with the recommendation. The EPRC does not provide for defining and enforcing criteria by which standards organizations or professional societies operate, or for designating an organization(s) to define or enforce such requirements. FDA notes that such standards and training are generally provided for by appropriate organizations and professions, and FDA frequently collaborates with these organizations and professions. FDA supports the continuation of such efforts by these entities to educate members on best practices for safe use of radiation in their profession. For dental imaging specifically, FDA, in collaboration with the Conference of Radiation Control Program Directors (CRCPD), recently completed a nationwide survey of the use of radiation in dental imaging facilities (Ref. 10). FDA staff participated in developing a report by the National Council on Radiation Protection and Measurements (NCRP) on radiation protection in dentistry (Ref. 11). FDA has also collaborated with the American Dental Association on guidelines for the selection of patients for dental radiographic examinations (Ref. 7). FDA hopes the results of these kinds of collaborations, and other work from similar organizations, will help inform FDA and other organizations of best practices and recommendations for training and equipment standards.

(Comment 7) One comment recommended FDA withdraw the rules and regulations for the lowest risk radiation emitting electronic products first. The commenter suggested removing reporting of assembly for wall mounted x-ray generators for intraoral radiography, while maintaining reporting for handheld portable x-ray generators for use in dentistry, which are relatively new and without the same safety record.

(Response 7) FDA disagrees with the comment. FDA has taken a risk-based assessment in amending the regulations. FDA considers submission to FDA of any report of assembly for certified components of diagnostic x-ray products to no longer be necessary, while continuing to facilitate the submission of such reports of assembly, where applicable, to State agencies and purchasers. Diagnostic x-ray systems still need to meet the product-specific performance standards under part 1020 (21 Code of Federal Regulations (CFR), part 1020), including the submission of any reports of assembly of installed certified components as applicable. Diagnostic x-ray systems, including handheld dental x-ray units, will also continue to be subject to applicable medical device regulations (see, *e.g.,* 21 CFR parts 803, 807, 820, 872, and 892).

(Comment 8) Some comments support the use of international voluntary consensus standards to help ensure regulatory requirements are met. Commenters noted the benefits, including consistency in regulation, global harmonization, efficiencies, minimizing unnecessary costs and delays in patient access to innovative new devices and promoting safety, and consistency with the National Technology Transfer and Advancement Act (Pub. L. 104–113), and Office of Management and Budget's (OMB) directive Circular A–119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (Ref. 12).

(Response 8) FDA agrees with these comments and will continue to participate in the development of international standards and their use for regulatory purposes as appropriate.

(Comment 9) One comment expressed interest in FDA providing information on future technologies and other measures that may reduce or eliminate radiation exposure.

(Response 9) FDA recommends that medical professionals seek continuing education through their appropriate professional societies to maintain knowledge of new technologies and best practice guidelines. With respect to medical devices, FDA's Q-Submission Program (Ref. 13) offers manufacturers the opportunity to receive feedback on their proposed regulatory pathway and test plans when developing new devices and technologies that may improve image quality and patient safety.

C. General Format and Edit Comments

(Comment 10) One comment recommended reformatting table 1 of § 1002.1 for clarity by merging and shading the category rows.

(Response 10) FDA understands the concern for readability of the regulations; however, FDA is limited in the formatting tools available for display and printing of regulations in the **Federal Register** and the CFR, as such stylistic issues are determined by the U.S. Government Publishing Office for the entire Federal government. The information will continue to be displayed in table 1 as formatted and published in the proposed rule.

(Comment 11) One comment recommended clarifying in §§ 1002.20(b) and 1010.4(b) whether

submission of both electronic and paper reports and variance requests are acceptable.

(Response 11) FDA agrees with the recommendation and is revising the language in §§ 1002.20(b) and 1010.4(b) to clarify that ''either'' electronic or paper submissions are appropriate.

(Comment 12) One comment recommended that the regulations allow for use of the International Organization for Standardization (ISO) standard date format (''YYYY–MM–DD''), which is required for medical devices in 21 CFR 801.18(a), as an alternative to the EPRC format specified in § 1010.3(a)(2)(ii).

(Response 12) FDA agrees with the recommendation and is revising the regulation to alternatively provide for use of a manufacturing symbol and date format that is in accordance with applicable FDA recognized consensus standards, such as *ISO 7000: Graphical symbols for use on equipment* and *IEC 60417: Graphical symbols for use on equipment* (Ref. 14) (see § 1010.3(a)(2)(ii) of this final rule).

D. Records and Reports Comments

(Comment 13) One comment requested clarification of the document retention requirements related to initial (§ 1002.10), supplemental (§ 1002.11), abbreviated (§ 1002.12), and annual reports (§ 1002.13). The Agency was asked to state clearly that manufacturers will no longer need to generate and retain these reports.

(Response 13) The proposed rule modified table 1 (§ 1002.1) to show that manufacturers of diagnostic x-ray products would no longer need to submit initial (§ 1002.10), supplemental (§§ 1002.11), abbreviated (§ 1002.12), and annual reports (§ 1002.13). In the final rule, we are maintaining this change. As a result, manufacturers of diagnostic x-ray systems will no longer need to generate and retain such reports related to diagnostic x-ray systems. To clarify, this modification would not remove these requirements for all products listed under table 1 (§ 1002.1 of this final rule). Many other reporting and recordkeeping requirements are unchanged including, as applicable based on the requirements in § 1002.1, the requirements for test and distribution records specified in § 1002.30.

(Comment 14) One comment requested that FDA clarify if an annual report would still be required for a diagnostic x-ray system that falls within this category due to its display being classified as a television product (§ 1020.10). The comment suggested removing the reporting requirements for such displays that are included in diagnostic x-ray systems.

(Response 14) FDA appreciates the comment and recognizes there may be confusion about reporting requirements for diagnostic x-ray systems that include television displays. FDA agrees that reporting should not be required for medical device manufacturers of diagnostic x-ray systems that use modern display technologies (*e.g.,* light emitting diode and liquid crystal display) that do not incorporate a cathode ray tube display. However, FDA believes that the reporting requirement should be maintained for displays that do contain a cathode ray tube, and were manufactured subsequent to January 15, 1970, because these types of displays generate ionizing radiation during use. FDA is therefore amending § 1020.10(a) to clarify that the television product performance standard (and thus reporting requirements) only applies to televisions/displays that contain a cathode ray tube. FDA believes EPRC reporting for such older technologies is necessary for the public health and safety to monitor the use of cathode ray tubes in televisions/displays. Given the outdated nature of the cathode ray tube technology, at this time, FDA believes this type of television display included in diagnostic x-ray systems is the only type that would continue to benefit from the annual reporting requirement. Therefore, FDA does not believe that excluding this type of television display product from the reporting requirements is appropriate at this time.

(Comment 15) One comment requested FDA to clarify how the changes in reporting would impact the process for manufacturers to receive accession numbers, which are used for customs clearance.

(Response 15) Manufacturers of diagnostic x-ray systems that are no longer required to submit product reports, and who therefore will no longer receive an accession number, will no longer need to submit an accession number when importing products (see § 1002.1, table 1 of this final rule). The import process for diagnostic x-ray systems will be the same as for other medical devices that do not require submission of product reports. Manufacturers can refer to FDA's website for more information on the imports process and program (Ref. 15).

(Comment 16) One comment mentioned the concern that if the records and reporting requirements for electronic products and medical devices are removed or reduced, then end-users will rely on state requirements, which may not have changed in many years. The comment raised concerns that in some states, repealing regulations for records and reporting requirements for electronic products and medical devices may be catastrophic if a recall on ionizing radiation equipment were issued.

(Response 16) FDA believes recordkeeping is important in case of recalls and that compliance with all applicable performance standards is important to ensure the protection of the public health and safety. The amendments do not change FDA's authority or a manufacturer's responsibilities if a product is defective or fails to comply with performance standards under section 534 of the FD&C Act. The final rule does not change any of the manufacturer, dealer, or distributer recordkeeping requirements under §§ 1002.1, 1002.30, 1002.40, or 1002.41 that are used to notify potentially impacted persons. The final amendments also do not change the reporting, notification, and requirements to perform corrective actions under part 1003 (21 CFR part 1003) for electronic product defects or failure to comply with a performance standard. Lastly, the amendments do not change any of the regulations applicable to the recall of medical devices under 21 CFR part 806. Therefore, FDA disagrees that it would be catastrophic if a recall on ionizing radiation equipment were issued following these amendments.

E. Reports of Assembly, Forms, and Guidances Comments

(Comment 17) Some comments supported amending the regulations to no longer require assemblers who install certified accessory components of diagnostic x-ray systems to submit reports of assembly (Form FDA 2579) to FDA.

(Response 17) FDA agrees with the comment. In this rulemaking, FDA is removing the requirement to submit a copy of Form FDA 2579 to FDA. Assemblers will still be required to submit a copy to the purchaser, and, where applicable, to state agencies responsible for radiation protection.

(Comment 18) One comment requested clarification on whether FDA will continue to make available Form FDA 2579 for manufacturers to use for submitting to states and purchasers. A comment also suggested that the form be made available in a PDF fillable format and that it retain a document control number field.

(Response 18) FDA agrees with this request and is revising § 1020.30(d)(1) to specify that Form FDA 2579 is available online. FDA intends to make the form

PDF fillable and retain a field on the form for a document control number. However, FDA does not intend to generate or specify the format of document control numbers.

(Comment 19) One comment asked if the Agency will generate and/or require a unique document control number for each report of assembly, with a suggestion that manufacturers could develop a unique identification format for the document control numbers.

(Response 19) At this time, FDA will not generate document control numbers or define the format that manufacturers utilize. Manufacturers are welcome to develop a standardized scheme for the document control number if they wish.

(Comment 20) One comment requested FDA to clarify if manufacturers will need to keep a record of the report of assembly on file.

(Response 20) Assemblers, including manufacturers who are assembling diagnostic x-ray equipment, subject to the provisions of § 1020.30(d) will still be required under § 1002.1(c)(4) to maintain a copy of the report of assembly for 5 years.

(Comment 21) One comment requested FDA to specify what reporting guides, forms, and guidance will be removed from the FDA website.

(Response 21) The Paperwork Reduction Act (PRA) section of this final rule (section IX) identifies what forms will be removed or amended. The publication of the final rule coincides with updates to relevant FDA guidance documents for consistency with the amended regulations.

(Comment 22) Several commenters sought clarity on reporting and recordkeeping responsibilities associated with the changes in the proposed rule, including any need to document reliance on recognized consensus standards for diagnostic x-ray systems. While commenters understood some reports and forms that would no longer need to be submitted to FDA, there was uncertainty regarding certain requirements to generate and maintain test records and document compliance with the standards.

(Response 22) Manufacturers will no longer need to generate certain specific reports to submit to FDA. In finalizing the rule, FDA is withdrawing the reporting guides for reports that are no longer required to be submitted. Manufacturers will still need to maintain test and distribution records (§ 1002.30), where applicable. If a manufacturer chooses to conform to applicable recognized IEC standards in lieu of conforming to the performance standards as described in FDA guidance (Ref. 16), then manufacturers must include in their test records documentation specific to the scope of the corresponding standards.

F. Accidental Radiation Occurrences Comments

(Comment 23) Several comments supported quarterly submission for AROs that are not associated with a death or serious injury. One comment suggested that the regulations be further amended so that manufacturers of medical devices that are also electronic products only need to comply with the Medical Device Reporting (MDR) requirements.

(Response 23) ARO reporting is critical for FDA to meet its responsibility to identify and reduce unnecessary sources of radiation exposure to the public for medical and non-medical devices. Medical device manufacturers are required to report once they are aware of information that reasonably suggests the medical device may have caused or contributed to death or serious injury or there is a malfunction that, if it were to recur, is likely to cause or contribute to a serious injury or death (part 803 (21 CFR part 803)). Medical devices that also meet the definition of an electronic product must also comply with the ARO reporting requirements in § 1002.20, which requires manufacturers to report a single event, or series of events, that resulted in injurious or potentially injurious exposure of any person to electronic product radiation as a result of a malfunction due to the manufacturing, testing, or use of an electronic product. The ARO reporting program is intended to capture both serious malfunctions that require immediate action to prevent future death or injury (which overlaps with MDRs) and less-serious events (which may not overlap with MDRs) where periodic reporting would help identify unnecessary radiation exposure that may be addressed through manufacturer correction or through revisions to safety standards. For this reason, FDA believes ARO reporting requirements should be maintained even when the product is subject to part 803 reporting requirements to ensure the protection of the public health and safety under the EPRC program.

(Comment 24) One comment requested that FDA amend the regulations to state that instances in which an exposure made by a healthcare professional that is deemed to be clinically necessary is not an ARO even when it is a repeat scan or image caused by a system interruption.

(Response 24) The term ''accidental radiation occurrence'' under § 1000.3(a) includes two essential aspects to such an event. First, electronic product radiation must have been emitted. For ionizing radiation, FDA considers the use of the linear no-threshold model (*i.e.,* a threshold below the amount of ionizing radiation that is not ''potentially injurious'') (Ref. 17) as a prudent and practical approach for radiation protection. Second, the radiation emission must have been accidental, by which the Agency means that the emission was unintended and unexpected. An intended and expected radiation emission, such as an intentional repeat scan or image, does not meet the criterion of ''accidental'' and is not an ARO. To improve clarity on this distinction, FDA is amending the definition of an ARO (§ 1000.3(a) in this final rule) to include the word ''accidental'' within the definition to more clearly indicate that an ARO is an accidental event resulting in radiation exposure. With this clarification, FDA does not believe it is necessary to further amend the regulation by providing specific examples involving radiation occurrences that are not considered to be accidental.

(Comment 25) A few comments asked FDA to clarify how the tracking and trending analysis relates to the requirements in § 1002.20(a) and (b) and what would be expected as part of this new requirement.

(Response 25) FDA acknowledges there may be confusion regarding how the quarterly summary reporting with tracking and trending analysis relates to the requirements under § 1002.20(a) and (b). FDA is therefore amending § 1002.20 to clarify that: (1) the quarterly report must include information required under § 1002.20(b)(1) through (7) for each occurrence where known to the manufacturer, (2) that accidental radiation occurrences may be grouped to identify the most common circumstances and potential cause(s), including but not limited to, design changes, manufacturing, or user, and (3) that planned mitigation(s) with an assessment of effectiveness, or a justification for why mitigation is not necessary, must be associated with each occurrence or grouping of similar occurrences (see § 1002.20(c)(2)(ii) in this final rule). Such incidents should also be evaluated to determine if the accidental radiation occurrence is the result of a defect as defined in § 1003.2 of this chapter or fails to comply with an applicable Federal standard (see § 1003.10). Medical device manufacturers may be able to rely on information already being generated as

part of their corrective and preventive actions (21 CFR 820.100).

(Comment 26) A few comments asked FDA to clarify if the tracking and trending analysis applied to both immediate reports and quarterly reports.

(Response 26) The submission of the tracking and trending analysis only applies to quarterly reporting.

G. Laser Comments

(Comment 27) Several comments stated that the proposed amendments to § 1040.10 were confusing and should be clarified. The comments raised concerns about creating a circular logic path between the text proposed in § 1040.10(a)(1), which indicates the standard is not applicable to an uncertified laser product that is incorporated into an electronic product that is then certified by the manufacturer, and the certification requirements in § 1010.2(a), which requires certification when the performance standard is applicable. Commenters stated that the term ''uncertified'' in proposed § 1040.10(a)(1), along with other edits, caused confusion because certain aspects of the standard appeared to be required/applicable, while certification was not required.

Multiple comments recommended that FDA either: (1) revise or keep the original language of certain paragraphs in § 1040.10, with removal or modifications to specific sections for clarity or (2) keep the existing language in § 1040.10(a) and instead modify §§ 1002.1(c), 1010.2, and 1010.3, which would have the effect of §§ 1040.10 and 1040.11 still being required even if certification, identification, and manufacturer's reports are not required.

(Response 27) FDA agrees with the latter recommended approach (#2) to keep the existing language in § 1040.10, and instead amend § 1002.1 in table 1 and § 1010.2, consistent with the amendments in the proposed rule, to clarify when and under what conditions reporting would not need to be duplicated. In those situations, the manufacturers would be considered distributors of certified laser products, and only subject to the applicable distribution recordkeeping requirements under §§ 1002.40 and 1002.41 for the certified products (see § 1002.1, table 1, fn. 9 in this final rule). Also, we are revising § 1010.2 to identify the conditions under which a manufacturer could incorporate a certified laser product without the requirement to re-certify or re-report the product (see § 1010.2(e) of this final rule).

(Comment 28) Some comments raised concerns that the proposed language in § 1040.10(a)(2) did not clearly require products to comply with the performance standards after a certified laser was incorporated.

(Response 28) The intent of the modifications in the proposed rule was to avoid duplicative reporting of information from manufacturers who incorporate a certified laser system into a product. The certified laser system, and the product into which it is incorporated, would still be required to conform with the performance standards. Products that incorporate a certified laser product are still required to comply with the FDA's performance standards. To clarify this, we are revising § 1010.2 to clearly identify under what conditions a product that incorporates a certified laser system would be considered certified, and thus not need to be re-certified. In this final rule, all of the following conditions must be met: (1) the incorporated laser system is not a laser product intended for use as a component or replacement as described in § 1040.10(a)(1) and (2); (2) the manufacturer of the incorporated laser system certifies such laser system and meets the reporting requirements under § 1002; (3) the product incorporating the certified laser system is not independently subject to additional reporting or performance standards requirements; (4) the incorporated laser system is not modified as defined in § 1040.10(i), and all performance features that apply to the incorporated laser system under § 1040.10(f) are available on the product incorporating the certified laser system; (5) all labeling requirements that apply to the incorporated laser system under §§ 1010.2, 1010.3, 1040.10(g), and 1040.11(a)(3) are visible on the outside of the product incorporating the certified laser system, with the exception that the certification or identification labels need not be visible on the outside of products incorporating a certified Class I laser; (6) the incorporated laser system is installed in the product in accordance with the instructions provided by the manufacturer of the incorporated laser system, including instructions for placing additional externally facing labels found in subsection (v), and meeting the other conditions in the subsections; (7) the manufacturer of the product that incorporates the laser system provides the end user with information required under § 1040.10(h)(1) as provided to them by the manufacturer of the incorporated laser system; and (8) the labeling requirements under part 1010 and § 1040.10(g) for the incorporated laser system would be met in any service configuration of the product incorporating the laser system or when the incorporated laser system is removed from the product into which it has been incorporated, and reproductions of such labels are found in the user information. Manufacturers of products that do not meet these conditions would need to certify and report the product that incorporates the certified laser system based on the class of the laser product as described in § 1002.1.

(Comment 29) One comment raised concerns regarding the criteria for the incorporated laser system to be installed in accordance with the instructions provided by the manufacturer of the incorporated laser system. The comment stated that it would be difficult for the manufacturer of the incorporated laser system to foresee all potential installation options by other manufacturers.

(Response 29) FDA does not expect the manufacturer of an incorporated laser system to foresee all potential installation options. FDA expects that a manufacturer planning to market a laser product specifically to be certified and incorporated into other systems would identify and specify any installation options and requirements, while taking into consideration how reasonable variations in the installation instructions should be provided to customers to ensure the conditions in § 1010.2(e) are met. However, ultimately, the manufacturer of the incorporated laser system is responsible for ensuring their finished product is in compliance with all applicable regulatory requirements when certified and marketed. The manufacturer of the product incorporating the laser system is responsible for complying with the conditions in § 1010.2(e). Otherwise, those manufacturers would need to complete the certification, reporting, and other applicable laser product requirements under §§ 1002 and 1040.10. For example, if the installation instructions would result in the laser product not meeting the conditions under § 1010.2(e) (*e.g.,* instructions that would result in a required safety interlock being unavailable), then the product incorporating the certified laser would not be considered to have met the certification requirements because all conditions in § 1010.2(e) must be met.

(Comment 30) FDA received comments expressing concern with the incorporation into regulation the policies described in FDA's Laser Notice 42, including expansion of those policies into regulation for higher

powered laser products without the requirements that the products incorporating higher power lasers comply with the performance standards. A commenter questioned whether the reporting requirements and performance standard would be applicable to a product that incorporated a certified Class I laser along with an uncertified Class IV laser, and if the labeling or safety features of the final product would need to meet the Class IV performance standards. Similar comments recommended that FDA revise and extend policies of Laser Notice 42 for clarity with additional requirements to ensure safety of higher class products.

(Response 30) As noted in Response 28, this final rule is revising § 1010.2 to identify under what conditions a product that incorporates a certified laser system would be considered to have met the certification requirements. There are several conditions, all of which must be met, including that the product incorporating the certified laser system must not be independently subject to additional reporting requirements or performance standards (see § 1010.2(e)(iii) in this final rule). FDA added this clarification to the revisions under § 1010.2(e) of this final rule to ensure higher class products will continue to be subject to any applicable certification requirements, despite the incorporated laser system having met the certification requirements. For example, a Class IV laser product that incorporates a certified Class I laser does not meet the conditions in § 1010.2(e)(iii), as additional certification and reporting requirements associated with the Class IV laser still apply. In addition, the incorporated laser system must not be modified, as defined in § 1040.10(i), and all performance features that apply to the incorporated laser system under § 1040.10(f) must be available on the product incorporating the certified laser system (see § 1010.2(e)(iv) in this final rule). All labeling requirements that apply to the incorporated laser system under § 1040.10(g) must be visible on the outside of the product incorporating the certified laser system, with the exception that the certification or identification labels need not be visible on the outside of products that incorporate a certified Class I laser (see § 1010.2(e)(v) in this final rule). The incorporated laser system must be installed in accordance with the instructions provided by the manufacturer of the incorporated laser system, including ensuring any required safety features or labeling are available (see § 1010.2(e)(vi) in this final rule). The manufacturer of the product incorporating the laser system must also provide the end user with laser safety information as provided to them by the manufacturer of the incorporated laser system (see § 1010.2(e)(vii) in this final rule). In addition, the labeling requirements in part 1010 and § 1040.10(g) for the incorporated laser system must be met in any service configuration of the product that incorporates the laser system, including when the incorporated laser system is removed from the product into which it has been incorporated, and reproductions of such labels must be included in the user information (see § 1010.2(e)(viii) in this final rule).

(Comment 31) One comment recommended limiting the amendments only to the lowest class of laser products; or a subset of classes with additional clarification to address the visibility of the warning logo type and aperture label; or all classes with clarifications about the difference between ''attaching'' versus ''assembling in, embedding in, or otherwise incorporating'' a laser or laser system.

(Response 31) FDA believes that the revisions to §§ 1002.1 and 1010.2(e) that are being made in this final rule make it sufficiently clear that the manufacturer of the product incorporating the certified laser must not make modifications that would alter the availability of safety information or compliance with the standard if they wish to maintain the certification. FDA has added clarification to the revisions under § 1010.2(e)(v) and (vi) of this final rule to ensure that visibility of certain labeling requirements that apply to the incorporated laser system continue to be maintained. Any modifications that would modify the class of laser, compliance with the performance standard, visibility of required labeling, or accessibility to required safety information would not meet the conditions of § 1010.2(e) and the product would no longer be considered certified—meaning the manufacturer of the product incorporating the laser would need to complete the applicable certification and reporting requirements (see also Response 29).

VI. Effective Date

This rule is effective 30 days after the date of publication in the **Federal Register**.

VII. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the final rule under Executive Order (E.O.) 12866, E.O. 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). EOs 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is not a significant regulatory action as defined by E.O. 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule will reduce regulations that are outdated and otherwise clarify existing requirements. Because this final rule does not impose any additional regulatory burdens, we certify that this final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This final rule will not result in an expenditure in any year that meets or exceeds this amount.

B. Summary of Costs and Benefits

We estimate the benefits of this rule in terms of cost savings. We derive the cost savings to industry from the reduction in labor associated with the reporting, recordkeeping, performance standards, and third-party disclosure requirements. Similarly, cost savings to FDA result from the reduction in labor hours required to review reports. The total present-value cost savings over a 20-year time period are $69.71 million at a 7 percent discount rate and $97.89 million at a 3 percent discount rate. Annualized total cost savings are $6.58 million. We estimate the costs to read the rule for all reporting respondents. The present value costs are $1.60 million, and the annualized costs calculated over a 20-year time period are $0.14 million at a 7 percent discount rate and $0.10 million at a 3 percent

discount rate. A summary of the quantified cost savings and costs of the rule are presented in Table 1.

TABLE 1—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF FINAL RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (percent)	Period covered	
Benefits:							
Annualized Monetized	$6.58	$6.58	$6.58	2021	7	20	
$millions/year.	6.58	6.58	6.58	2021	3	20	
Annualized Quantified					7		
					3		
Qualitative							
Costs:							
Annualized Monetized	0.14	0.14	0.14	2021	7	20	
$millions/year.	0.10	0.10	0.10	2021	3	20	
Annualized Quantified					7		
					3		
Qualitative							
Transfers:							
Federal Annualized Monetized $millions/year.					7		
					3		
From/To	From:			To:			
Other Annualized Monetized $millions/year.					7		
					3		
From/To	From:			To:			

Effects:
State, Local or Tribal Government:
Small Business:
Wages:
Growth:

C. Summary of Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the rule does not impose any additional regulatory burdens, we certify that the final rule will not have a significant economic impact on a substantial number of small entities. This analysis, as well as other sections in this document and the Preamble of the final rule, serves as the Final Regulatory Flexibility Analysis, as required under the Regulatory Flexibility Act. The full preliminary analysis of economic impacts is available in the docket for this final rule (Ref. 18) and at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

VIII. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.30(h) and (i) and 25.34(c) 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.

IX. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the OMB under the PRA (44 U.S.C. 3501–3521). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting, recordkeeping, and third-party disclosure burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Electronic Products; OMB Control No. 0910–0025—Revision

Description: FDA is amending its regulations for requirements for certain reporting and records of electronic products by removing specific reporting, as well as repealing outdated recommendations for radiation protection and performance standards, and removing submission requirements for copies of certain applications and forms to alleviate regulatory burden to both FDA and industry.

The records and reporting requirements for electronic products and medical devices include various reports and records depending upon the specific type of electronic product. FDA has determined upon review of the records and reporting requirements that some of the requirements are unnecessary or may be duplicative of other reporting requirements by FDA and State regulators.

Description of Respondents: The respondents to this information collection are electronic product manufacturers, importers, and assemblers of electronic products from private sector, for-profit businesses.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR section	FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [2]
Product reports—1002.10(a)–(k) [3].	3639—Cabinet x-ray 3632—Laser 3640—Laser light show 3630—Sunlamp 3659—TV 3660—Microwave oven 3801—UV lamps	1,149	2.2	2,529	24	60,685
Supplemental reports—1002.11(a)–(b) [3].		440	2.5	1,100	0.5 (30 minutes).	550
Abbreviated reports—1002.12 [3]	3629—General abbreviated report. 3646—Mercury Vapor Lamp Products Radiation Safety Report. 3663—Microwave products (non-oven).	54	1.8	97	5	485
Annual reports—1002.13(a)–(b) [3].	3628—General 3634—TV 3641—Cabinet x-ray 3643—Microwave oven 3636—Laser 3631—Sunlamp	1,410	1.3	1,833	18	32,994
Accidental radiation occurrence reports—1002.20 [3].	3649—ARO	75	4	300	2	600
Exemption requests—1002.50(a) and 1002.51 [4].	3642—General correspondence.	4	1.3	5	1	5
Product and sample information—1005.10 [4].	2767—Sample product	5	1	5	0.1 (6 minutes)	1
Identification information and compliance status—1005.25 [4].	2877—Imports declaration	12,620	2.5	31,550	0.2 (12 minutes).	6,310
Alternate means of certification—1010.2(d) [4].		1	2	2	5	10
Variance—1010.4(b) [4]	3633—General variance request. 3147—Laser show variance request. 3635—Laser show notification	350	1.1	385	1.2	462
Exemption from performance standards—1010.5(c) and (d) [4].		1	1	1	22	22
Alternate test procedures—1010.13 [4].		1	1	1	10	10
Microwave oven exemption from warning labels—1030.10(c)(6)(iv) [4].		1	1	1	1	1
Laser products registration—1040.10(a)(3)(i) [4].	3637—Original equipment manufacturer (OEM) report.	70	2.9	203	3	609
Total						102,744

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Total hours have been rounded.
[3] We have requested revision of this information collection.
[4] The burden estimate for this information collection is currently approved and included for the convenience of the reader. We have not requested revision of this line item at this time.

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity; 21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [2]
Manufacturer test and distribution records—1002.30 and 1002.31(a) [3].	1,409	1,650	2,324,850	0.12 (7 minutes)	278,982
Dealer/distributor records—1002.40 and 1002.41 [3].	2,909	50	145,450	0.05 (3 minutes)	7,273
Information on diagnostic x-ray systems—1020.30(g) [4].	50	1	50	0.5 (30 minutes)	25

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

Activity; 21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [2]
Laser products distribution records—1040.10(a)(3)(ii) [4].	70	1	70	1	70
Total					286,350

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Total hours have been rounded.
[3] We have requested revision of this information collection.
[4] The burden estimate for this information collection is currently approved and included for the convenience of the reader. We have not requested revision of this line item at this time.

TABLE 4—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]
Technical and safety information for users—1002.3 [3]	1	1	1	12	12
Dealer/distributor records—1002.40 and 1002.41 [3]	30	3	90	1	90
Television receiver critical component warning—1020.10(c)(4) [3]	1	1	1	1	1
Cold cathode tubes—1020.20(c)(4) [3]	1	1	1	1	1
Report of assembly of diagnostic x-ray components—1020.30(d), (d)(1)–(2) (Form FDA 2579—Assembler report) [4]	1,230	34	41,820	0.3 (18 minutes)	12,546
Information on diagnostic x-ray systems—1020.30(g) [3]	6	1	6	55	330
Statement of maximum line current of x-ray systems—1020.30(g)(2) [3]	6	1	6	10	60
Diagnostic x-ray system safety and technical information—1020.30(h)(1)–(4) [3]	6	1	6	200	1,200
Fluoroscopic x-ray system safety and technical information—1020.30(h)(5)–(6) and 1020.32(a)(1), (g), and (j)(4) [3]	5	1	5	25	125
CT equipment—1020.33(c)–(d), (g)(4), and (j) [3]	5	1	5	150	750
Cabinet x-ray systems information—1020.40(c)(9)(i)–(ii) [3]	6	1	6	40	240
Microwave oven radiation safety instructions—1030.10(c)(4) [3]	1	1	1	20	20
Microwave oven safety information and instructions—1030.10(c)(5)(i)–(iv) [3]	1	1	1	20	20
Microwave oven warning labels—1030.10(c)(6)(iii) [3]	1	1	1	1	1
Laser products information—1040.10(h)(1)(i)–(vi) [4]	2	1	2	20	40
Laser product service information—1040.10(h)(2)(i)–(ii) [4]	2	1	2	20	40
Medical laser product instructions—1040.11(a)(2) [3]	2	1	2	10	20
Sunlamp products instructions—1040.20 [3]	1	1	1	10	10
Mercury vapor lamp labeling—1040.30(c)(1)(ii) [3]	1	1	1	1	1
Mercury vapor lamp permanently affixed labels—1040.30(c)(2) [3]	1	1	1	1	1
Total					15,508

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Total hours have been rounded.
[3] The burden estimate for this information collection is currently approved and included for the convenience of the reader. We have not requested revision of this line item at this time.
[4] We have requested revision of this information collection.

The estimates were generated from discussions with subject matter experts at FDA.

FDA is revising the applicability of the recordkeeping and reporting requirements for some products (§ 1002.1). We revised the burden estimates for product reports, supplemental reports, abbreviated reports, annual reports, manufacturer test and distribution records, and dealer and distributor records by reducing the number of respondents/recordkeepers to reflect the revised applicability of the recordkeeping and reporting requirements. We also revised Form FDA 3646 ''Mercury Vapor Lamp Products Radiation Safety Report'' (now listed under Abbreviated Reports consistent with the revision of § 1002.1) and removed the following forms:

- Form FDA 3626, ''A Guide for the Submission of Initial Reports on Diagnostic X-Ray Systems and Their Major Components''
- Form FDA 3627, ''Diagnostic X-Ray CT Products Radiation Safety Report''

- Form FDA 3638, ''Guide for Filing Annual Reports for X-Ray Components and Systems,''
- Form FDA 3644, ''Guide for Preparing Product Reports for Ultrasonic Therapy Products''
- Form FDA 3645, ''Guidance for Preparing Annual Reports for Ultrasonic Therapy Products,''
- Form FDA 3647, ''Guide for Preparing Annual Reports on Radiation Safety Testing of Mercury Vapor Lamps''
- Form FDA 3661, ''Guide for the Submission of an Abbreviated Report on X-ray Tables, Cradles, Film Changers or Cassette Holders Intended for Diagnostic Use''
- Form FDA 3662, ''Guide for Submission of an Abbreviated Radiation Safety Reports on Cephalometric Devices Intended for Diagnostic Use''

The amended applicability of the recordkeeping requirements for dealer and distributor records (see §§ 1002.40 and 1002.41) results in a small decrease in the number of recordkeepers.

FDA is eliminating requirements for manufacturers to report model numbers of new models of a model family that do not involve changes in radiation emission or requirements of a performance standard in quarterly updates to their annual reporting (§ 1002.13(c)). We have removed the burden estimate associated with § 1002.13(c). Generally, other subsections require specified product manufacturers to submit annual reports to FDA which summarize certain manufacturing records (§ 1002.13(a) and (b)). FDA is not amending these annual report requirements.

FDA is amending the timing for submission of reporting requirements for AROs that are not associated with a death or serious injury (§ 1002.20). The amendment will allow manufacturers of a radiation emitting electronic product to submit quarterly summary reports of AROs that are not associated with a death or serious injury and not required to be reported under the medical device reporting regulations (§ 1002.20; part 803). FDA believes that amending the regulations to allow summary reporting for AROs for electronic products extends the approach of eliminating or reducing duplicative reporting requirements beyond the medical device arena and promotes harmonization between this reporting and the new voluntary malfunction summary reporting for medical devices (see part 803; ''Medical Devices and Device-Led Combination Products; Voluntary Malfunction Summary Reporting Program for Manufacturers'' (83 FR 40973, August 17, 2018)).

FDA is also amending the applications for variances process (§ 1010.4(b)) to no longer require a manufacturer to submit two additional copies with the original documents. While this amendment would not generate any substantive change to the information collection, respondents may realize a small monetary savings from the usual and customary administrative expenses associated with the preparation of the copies.

FDA is amending the reports of assembly requirements for major components of diagnostic x-ray systems to no longer require assemblers who install certified components to submit a report of assemblies, Form FDA 2579, to CDRH (§ 1020.30(d)(1)). FDA is also withdrawing the language that requires submission to ''the Director'' in this subsection, but will still publish a PDF form online for assemblers to download, complete, and provide to applicable States and purchasers as required. We have moved the corresponding information collection burden estimate from reporting to third-party disclosure burden and revised Form FDA 2579.

FDA is amending the reporting requirements for manufacturers that incorporate a certified laser product to reduce reporting that is considered duplicative under certain conditions. Manufacturers that incorporate a certified laser system meeting the conditions of § 1010.2(e) are considered distributors of the certified laser and only subject to the applicable distribution recordkeeping requirements under §§ 1002.40 and 1002.41 for the certified products. Accordingly, we have reduced the number of respondents for ''Laser products information—1040.10(h)(1)(i)–(vi)'' and ''Laser product service information—1040.11(h)(2)(i)–(ii).''

FDA is repealing the performance standards for ultrasonic therapy products (§ 1050.10). We have therefore removed the burden estimate associated with § 1050.10.

We received several comments related to the proposed rule. Descriptions of the comments and our responses are provided in Section V of this document, Comments on the Proposed Rule and FDA Response. Comments and responses related to the provisions that underlie the information collection are described in the following sections: section V.B, regarding general comments; section V.E, regarding records and reports; section V.F, regarding reports of assembly, forms and guidances; section V.G, regarding accidental radiation occurrences; and section V.H, regarding laser comments. We have not made changes to the estimated burden as a result of the comments.

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the PRA.

Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

X. Federalism

We have analyzed this final rule in accordance with the principles set forth in E.O. 13132. We have determined that this rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the E.O. and, consequently, a federalism summary impact statement is not required.

We note that the current performance standards at § 1040.10 issued under section 534 of the FD&C Act preempt the States from establishing or continuing in effect any standard that is not identical to the Federal standard pursuant to section 542 of the FD&C Act. Those standards were issued before the E.O. We believe this preemption is consistent with section 4(a) of the E.O. which requires agencies to ''construe . . . a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Federal law includes an express preemption provision at section 542 of the FD&C Act that preempts the States from establishing, or continuing in effect, any standard with respect to an electronic product which is applicable to the same aspect of product performance as a Federal standard prescribed pursuant to section 534 of the FD&C Act and which is not identical to the Federal standard. (See *Medtronic, Inc.* v. *Lohr,* 518 U.S. 470 (1996); *Riegel* v. *Medtronic, Inc.,* 552 U.S. 312 (2008)). Section 542 of the FD&C Act does allow States to impose a more restrictive standard regarding emissions of

radiation from electronic products under certain circumstances.

This final rule does not impose any new performance standard requirements. This rule prescribes a reduction in Federal standards (through repeal of § 1050.10) pursuant to section 534 of the FD&C Act. This rule removes or excludes applicability of certain Federal standards, which no longer preempt any State issued performance standards to that same extent.

XI. Consultation And Coordination With Indian Tribal Governments

We have analyzed this final rule in accordance with the principles set forth in E.O. 13175. We have determined that the rule does not contain policies that would 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. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. They also can be purchased as a pdf or as hard copy (or both together, at a discounted price) from NCRP (*www.ncrponline.org*). FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

*1. EPA, Interagency Working Group on Medical Radiation, Federal Guidance Report No. 14. ''Radiation Protection Guidance for Diagnostic and Interventional X-Ray Procedures,'' 2014, available at *https://www.epa.gov/sites/production/files/2015-05/documents/fgr14-2014.pdf.*

2. NCRP, ''Radiation Dose Management for Fluoroscopically-Guided Interventional Procedures,'' Report No. 168, 2010, available at *https://ncrponline.org/publications/reports/ncrp-report-168/.*

*3. FDA, CDRH Health, ''Initiative to Reduce Unnecessary Radiation Exposure from Medical Imaging'' (2010), available at *https://www.fda.gov/radiation-emitting-products/initiative-reduce-unnecessary-radiation-exposure-medical-imaging/white-paper-initiative-reduce-unnecessary-radiation-exposure-medical-imaging#:~:text=practicing%20medical%20community.-,Initiative%20to%20Reduce%20Unnecessary%20Radiation%20Exposure%20from%20Medical%20Imaging,CT%2C%20fluoroscopy%2C%20and%20nuclear%20medicine.*

*4. FDA, ''Medical X-ray Imaging,'' available at *https://www.fda.gov/Radiation-EmittingProducts/RadiationEmittingProductsandProcedures/MedicalImaging/MedicalX-Rays/default.htm.*

*5. 2016 TEPRSSC Meeting, October 25–26, 2016, available at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Radiation-EmittingProducts/TechnicalElectronicProductRadiationSafetyStandardsCommittee/ucm526004.htm.*

6. NCRP, ''Radiation Protection in Dentistry,'' Report No. 145, 2003, available at *https://ncrponline.org/publications/reports/ncrp-reports-145/.*

*7. American Dental Association and FDA, ''Dental Radiographic Examinations: Recommendations for Patient Selection and Limiting Radiation Exposure,'' revised: 2012, available at *https://www.fda.gov/media/84818/download.*

*8. The American College of Radiology publishes and regularly updates Practice Parameters, Technical Standards, and Appropriateness Criteria®, available at *https://www.acr.org/Quality-Safety/Appropriateness-Criteria.*

*9. ICRP, ''The 2007 Recommendations of the International Commission on Radiological Protection. ICRP publication 103.'' *Annals of the ICRP.* 2007;37(2–4):1–332, available at *http://www.icrp.org/publication.asp?id=ICRP%20Publication%20103.*

10. Nationwide Evaluation of X-Ray Trends (NEXT), ''Tabulation and Graphical Summary of the 2014–2015 Dental Survey.'' February 2019. CRCPD Publication-E–16–2, available at *https://cdn.ymaws.com/www.crcpd.org/resource/collection/81C6DB13-25B1-4118-8600-9615624818AA/E-19-2_2014-2015_Dental_NEXT_Summary_Report.pdf.*

11. NCRP, ''Radiation Protection in Dentistry and Oral and Maxillofacial Imaging. Report No. 177,'' 2019, available at *https://ncrponline.org/shop/reports/report-no-177/.*

*12. OMB directive Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' available at *https://www.federalregister.gov/documents/2016/01/27/2016-01606/revision-of-omb-circular-no-a-119-federal-participation-in-the-development-and-use-of-voluntary.*

*13. FDA, ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program,'' May 7, 2019, available at *https://www.fda.gov/media/114034/download.*

14. IEC 60417:2002 DB, ''Graphical Symbols for Use on Equipment,'' available at *https://webstore.iec.ch/publication/2098.*

*15. FDA, Import Program, available at *https://www.fda.gov/industry/import-program-food-and-drug-administration-fda.*

*16. FDA, ''Medical X-Ray Imaging Devices Conformance with IEC Standards,'' May 8, 2019, available at *https://www.fda.gov/media/99466/download.*

17. NCRP, ''Management of Exposure to Ionizing Radiation: Radiation Protection Guidance for the United States. Report No. 180,'' 2018, available at *https://ncrponline.org/shop/reports/report-no-180-management-of-exposure-to-ionizing-radiation-radiation-protection-guidance-for-the-united-states-2018-2018/.*

*18. Economic Analysis of Impacts: Radiological Health Regulations; Amendments to Records and Reports for Radiation Emitting Electronic Products; Amendments to Performance Standards for Diagnostic X-ray, Laser and Ultrasonic Products, available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

List of Subjects

21 CFR Parts 1000 and 1002

Electronic products, Radiation protection, Reporting and recordkeeping requirements, X-rays.

21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exports, Radiation protection.

21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

21 CFR Part 1030

Electronic products, Microwave ovens, Radiation protection.

21 CFR Part 1050

Electronic products, Medical devices, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 1000, 1002, 1010, 1020, 1030, and 1050 are amended as follows:

PART 1000—GENERAL

■ 1. The authority citation for part 1000 continues to read as follows:

Authority: 21 U.S.C. 360hh–360ss.

■ 2. Amend § 1000.3 by revising paragraph (a) and removing paragraph (s) and redesignating paragraphs (t) and (u) as paragraphs (s) and (t).

The revision reads as follows:

§ 1000.3 Definitions.

* * * * *

(a) *Accidental radiation occurrence* means a single accidental event or series of accidental events that has/have resulted in injurious or potentially injurious exposure of any person to electronic product radiation as a result of the manufacturing, testing, or use of an electronic product.

* * * * *

Subpart C—[Removed]

■ 3. Remove subpart C, consisting of §§ 1000.50, 1000.55, and 1000.60.

PART 1002—RECORDS AND REPORTS

■ 4. The authority citation for part 1002 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 360hh–360ss, 371, 374.

■ 5. Amend § 1002.1 by revising table 1 to read as follows:

* * * * *

TABLE 1 TO § 1002.1—RECORD AND REPORTING REQUIREMENTS BY PRODUCT

Products	Manufacturer						Dealer & distributor
	Product reports 1002.10	Supplemental reports 1002.11	Abbreviated reports 1002.12	Annual reports 1002.13	Test records 1002.30(a) [1]	Distribution records 1002.30(b) [2]	Distribution records 1002.40 and 1002.41
DIAGNOSTIC X-RAY [3] (1020.30, 1020.31, 1020.32, 1020.33):							
Computed tomography					X	X	X
X-ray system [4]					X	X	X
Tube housing assembly					X	X	
X-ray control					X	X	X
X-ray high voltage generator					X	X	X
X-ray table or cradle					X	X	X
X-ray film changer					X	X	
Vertical cassette holders mounted in a fixed location and cassette holders with front panels					X	X	X
Beam-limiting devices					X	X	X
Spot-film devices and image intensifiers manufactured after April 26, 1977					X	X	X
Cephalometric devices manufactured after February 25, 1978					X	X	
Image receptor support devices for mammographic X-ray systems manufactured after September 5, 1978					X	X	X
CABINET X RAY (1020.40):							
Baggage inspection	X	X		X	X	X	X
Other	X	X		X	X	X	
PRODUCTS INTENDED TO PRODUCE PARTICULATE RADIATION OR X-RAYS OTHER THAN DIAGNOSTIC OR CABINET X-RAY:							
Medical					X	X	
Analytical			X	X	X	X	
Industrial			X	X	X	X	
TELEVISION PRODUCTS (1020.10):							
<0.1 milliroentgen per hour (mR/hr) IRLC [5]			X [8]	X [6]			
≥0.1mR/hr IRLC [5]	X [8]			X	X	X	
MICROWAVE/RF:							
MW ovens (1030.10)	X [8]			X	X	X	
MW diathermy			X				
MW heating, drying, security systems			X				
RF sealers, electromagnetic induction and heating equipment, dielectric heaters (2–500 megahertz)			X				
OPTICAL:							
Laser products (1040.10, 1040.11)							
Class I lasers and products containing such lasers [7 9]	X [8]			X	X		
Class I laser products containing class IIa, II, IIIa, lasers [7 9]	X			X	X	X	
Class IIa, II, IIIa lasers and products other than class I products containing such lasers [7 9]	X			X	X	X	X
Class IIIb and IV lasers and products containing such lasers [7]	X	X		X	X	X	X
SUNLAMP PRODUCTS (1040.20):							
Lamps only	X						
Sunlamp products	X	X		X	X	X	X
Mercury vapor lamps (1040.30)							
R lamps and T lamps			X				

[1] However, authority to inspect all appropriate documents supporting the adequacy of a manufacturer's compliance testing program is retained.
[2] The requirement includes §§ 1002.31 and 1002.42, if applicable.
[3] Report of Assembly (Form FDA 2579) is required for diagnostic x-ray components; see § 1020.30(d)(1)–(3) of this chapter.
[4] Systems records and reports are required if a manufacturer exercises the option and certifies the system as permitted in § 1020.30(c) of this chapter.
[5] Determined using the isoexposure rate limit curve (IRLC) under phase III test conditions (§ 1020.10(c)(3)(iii)) of this chapter.
[6] Annual report is for production status information only.
[7] Determination of the applicable reporting category for a laser product shall be based on the worst-case hazard present within the laser product.

[8] Manufacturers are exempt from product reports (§ 1002.10) and abbreviated reports (§ 1002.12), except the first product or abbreviated report for each category of: television products; microwave ovens; and products that are Class I laser under any condition of operation, maintenance, service, or failure (*e.g.,* Class I optical disc products, laser printers).

[9] Manufacturers that incorporate a certified laser system meeting the conditions of 21 CFR 1010.2(e) are considered distributors of the certified laser and only subject to the applicable distribution recordkeeping requirements under §§ 1002.40 and 1002.41 for the certified products.

§ 1002.13 [Amended]

■ 6. Amend § 1002.13 by removing paragraph (c).

■ 7. Revise § 1002.20 to read as follows:

§ 1002.20 Reporting of accidental radiation occurrences.

(a) Manufacturers of electronic products shall, where reasonable grounds for suspecting that such an incident has occurred, report to the Director, Center for Devices and Radiological Health, all accidental radiation occurrences reported to or otherwise known to the manufacturer and arising from the manufacturing, testing, or use of any product introduced or intended to be introduced into commerce by such manufacturer. Reasonable grounds include, but are not necessarily limited to, professional, scientific, or medical facts or opinions documented or otherwise, that conclude or lead to the conclusion that such an incident has occurred.

(b) Such reports shall be submitted either electronically through Center for Devices and Radiological Health eSubmitter or addressed to the Food and Drug Administration, Center for Devices and Radiological Health, ATTN: Accidental Radiation Occurrence Reports, Document Mail Center, 10903 New Hampshire Ave., Bldg. 66, rm. G609, Silver Spring, MD 20993–0002, and the reports and their envelopes shall be distinctly marked ''Report on 1002.20'' and shall contain all of the following information where known to the manufacturer:

(1) The nature of the accidental radiation occurrence;

(2) The location at which the accidental radiation occurrence occurred;

(3) The manufacturer, type, and model number of the electronic product or products involved;

(4) The circumstances surrounding the accidental radiation occurrence, including causes;

(5) The number of persons involved, adversely affected, or exposed during the accidental radiation occurrence, the nature and magnitude of their exposure and/or injuries and, if requested by the Director, Center for Devices and Radiological Health, the names of the persons involved;

(6) The actions, if any, which may have been taken by the manufacturer, to control, correct, or eliminate the causes and to prevent reoccurrence; and

(7) Any other pertinent information with respect to the accidental radiation occurrence.

(c) If a manufacturer:

(1) Is required to report to the Director under paragraph (a) of this section and also is required to report under part 803 of this chapter, the manufacturer shall report in accordance with part 803; or

(2) Is required to report to the Director under paragraph (a) of this section and is not required to report under part 803 of this chapter, the manufacturer shall:

(i) Immediately report incidents associated with a death or serious injury in accordance with paragraphs (a) and (b) of this section; and

(ii) Either immediately report incidents not associated with a death or serious injury individually or compile such incidents for submission in a quarterly summary report with tracking and trending analysis of that data in accordance with paragraphs (a) and (b) of this section. The quarterly report must cover information required under paragraphs (b)(1) through (7) of this section for each occurrence were known to the manufacturer. Occurrences may be grouped to identify the most common circumstances and potential cause(s), including but not limited to, design changes, manufacturing, or user. Planned mitigation(s) with an assessment of effectiveness, or a justification for why mitigation is not necessary, must be associated with each occurrence or grouping of similar occurrences. A manufacturer need not file a separate report under this section if an incident involving an accidental radiation occurrence is associated with a defect or noncompliance and is reported pursuant to § 1003.10 of this chapter.

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

■ 8. The authority citation for part 1010 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e-360j, 360hh-360ss, 371, 381.

■ 9. Amend § 1010.2 by adding paragraph (e) to read as follows:

§ 1010.2 Certification.

* * * * *

(e) Laser products under § 1040.10 of this chapter that incorporate a certified laser system (laser product) will be considered to have met the certification requirements in this section if all of the following conditions are met:

(1) The incorporated laser system is not a laser product intended for use as a component or replacement as described in § 1040.10(a)(1) and (2) of this chapter;

(2) The manufacturer of the incorporated laser system has certified such laser system under this section and meets the reporting requirements under part 1002 of this chapter;

(3) The product incorporating the certified laser system is not independently subject to additional reporting or performance standards requirements;

(4) The incorporated laser system is not modified as defined in § 1040.10(i) of this chapter, and all performance features that apply to the incorporated laser system under § 1040.10(f) are available on the product incorporating the certified laser system;

(5) All labeling requirements that apply to the incorporated laser system under §§ 1010.2, 1010.3, 1040.10(g), and 1040.11(a)(3) of this chapter are visible on the outside of the product incorporating the certified laser system, with the exception that the certification or identification labels need not be visible on the outside of products incorporating a certified Class I laser;

(6) The incorporated laser system is installed in accordance with the instructions provided by the manufacturer of the incorporated laser system, including instructions for placing additional externally facing labels found in paragraph (e)(5) of this section, and meeting the other conditions in paragraphs (e)(1) through (8) of this section;

(7) The manufacturer of the product that incorporates the laser system provides the end user with information required under § 1040.10(h)(1) of this chapter as provided to them by the manufacturer of the incorporated laser system; and

(8) The labeling requirements under part 1010 and § 1040.10(g) of this chapter for the incorporated laser system would be met in any service configuration of the product incorporating the laser system or when the incorporated laser system is removed from the product into which it had been incorporated, and reproductions of such labels are found in the user information.

■ 10. Amend § 1010.3 by revising paragraph (a)(2)(ii) to read as follows:

§ 1010.3 Identification.

* * * * *

(a) * * *

(2) * * *

(ii) The month and year of manufacture shall be provided clearly and legibly, without abbreviation, and with the year shown as a four-digit number as follows in this paragraph. Alternatively, a manufacturer may utilize a manufacturing symbol and date format that conforms with an applicable FDA recognized consensus standard.

Manufactured: (Insert Month and Year of Manufacture.)

* * * * *

■ 11. Amend § 1010.4 by revising paragraphs (b) introductory text, (b)(1), and (b)(2) introductory text to read as follows:

§ 1010.4 Variances.

* * * * *

(b) *Applications for variances.* If you are submitting an application for variances or for amendments or extensions thereof:

(1) You must either:

(i) Submit the variance application and supporting materials to CDRH by email using the *RadHealthCustomerService@fda.hhs.gov* mailbox; or

(ii) Submit an original copy of the variance application by mail to: U.S. Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center, Bldg. 66, Rm. G609, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002.

(2) The application for variance shall include the following information:

* * * * *

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

■ 12. The authority citation for part 1020 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360hh–360ss, 371, 381.

■ 13. Amend § 1020.10 by revising paragraph (a) to read as follows:

§ 1020.10 Television receivers with cathode ray tubes.

(a) *Applicability.* The provisions of this section are applicable to television receivers with cathode ray tubes manufactured subsequent to January 15, 1970.

* * * * *

■ 14. Amend § 1020.30 by revising paragraphs (d)(1) and (d)(2)(ii) to read as follows:

§ 1020.30 Diagnostic x-ray systems and their major components.

* * * * *

(d) * * *

(1) *Reports of assembly.* All assemblers who install certified components shall file a report of assembly, except as specified in paragraph (d)(2) of this section. The report will be construed as the assembler's certification and identification under §§ 1010.2 and 1010.3 of this chapter. The assembler shall affirm in the report that the manufacturer's instructions were followed in the assembly or that the certified components as assembled into the system meet all applicable requirements of §§ 1020.30 through 1020.33. All assembler reports must be on a form (Form FDA 2579 made available at *https://www.fda.gov/about-fda/reports-manuals-forms/forms*) prescribed by the Director, Center for Devices and Radiological Health. Completed reports must be submitted to the purchaser and, where applicable, to the State agency responsible for radiation protection within 15 days following completion of the assembly.

(2) * * *

(ii) Certified accessory components;

* * * * *

PART 1030—PERFORMANCE STANDARDS FOR MICROWAVE AND RADIO FREQUENCY EMITTING PRODUCTS

■ 15. The authority citation for part 1030 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 360hh–360ss, 371, 381.

■ 16. Amend § 1030.10 by revising paragraph (c)(6)(iv) introductory text as follows:

§ 1030.10 Microwave ovens.

* * * * *

(c) * * *

(6) * * *

(iv) Upon application by a manufacturer, the Director, Center for Devices and radiological Health, Food and Drug Administration, may grant an exemption from one or more of the statements (radiation safety warnings) specified in paragraph (c)(6)(i) of this section. Such exemption shall be based upon a determination by the Director that the microwave oven model for which the exemption is sought should continue to comply with paragraphs (c)(1) through (3) of this section under the adverse condition of use addressed by such precautionary statement(s). An application shall be submitted to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Copies of the written portion of the application, including supporting data and information, and the Director's action on the application will be maintained by the Dockets Management Branch for public review. The application shall include:

* * * * *

PART 1050—[REMOVED AND RESERVED]

■ 17. Under the authority of 21 U.S.C. 351, 352, 360, 360e–360j, 360hh–360ss, 371, 381, part 1050 is removed and reserved.

Dated: January 4, 2023.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2023–00922 Filed 1–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 94

[Docket No.: OJP (OVC) 1539]

RIN 1121–AA78

International Terrorism Victim Expense Reimbursement Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Adoption of interim rule as final; technical corrections.

SUMMARY: The Office for Victims of Crime (''OVC'') is promulgating this final rule for its International Terrorism Victim Expense Reimbursement Program (''ITVERP''), in order to finalize the interim final rule published on April 11, 2011, which removed a regulatory limitation on the discretion of the Director of OVC to accept claims filed more than three years after the date that an incident is designated as an incident of international terrorism. This final rule also makes non-substantive technical corrections to update citations to reflect the current location of the cited provisions.

DATES: This final rule is effective January 20, 2023.

ADDRESSES: For further information, see the ITVERP website at *http://www.ojp.usdoj.gov/ovc/intdir/itverp.*

FOR FURTHER INFORMATION CONTACT: Victoria Jolicoeur, ITVERP, Office for

Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW, Washington, DC 20531; (202) 307–5134.

SUPPLEMENTARY INFORMATION:

I. Background

ITVERP is a Federal program that provides reimbursement to nationals of the United States and Federal Government employees (and certain family members of such individuals, under some circumstances), who are victims of international terrorism and who incur expenses as a result of such incidents. For further information, see the ITVERP website at *http://www.ojp.usdoj.gov/ovc/intdir/itverp.*

Pursuant to 34 U.S.C. 20106 and 34 U.S.C. 20110(a), OVC promulgated an interim-final rule to provide the Director of OVC with express discretionary authority to accept claims filed more than three years after the date that an incident is designated as one of international terrorism. Largely owing to considerations of administrative convenience, the original ITVERP rule (promulgated in 2006) among other things limited the period within which OVC would entertain waivers of claim-filing deadlines. In 2011, based on experience administering the program since it went into effect in 2006, OVC determined that this limit on waivers of late claims could lead to denials of reimbursement for victims with otherwise meritorious claims, even under circumstances where tolling of the deadline would be justified.

This rule adopts as final the interim rule published April 11, 2011, at 76 FR 19909, which allows the Director of OVC to toll or extend the deadline for a late-filed claim where the Director finds good cause to do so. In the ordinary course, a showing of good cause generally requires that the claimant submit a written explanation—satisfactory to the Director—for missing the deadline. Generally speaking, examples of good cause might include situations such as where a victim's treatment for injuries sustained in an incident were covered initially by collateral sources, but these sources later become unavailable after the filing deadline has expired; where outreach to overseas claimants has not been effective; and where a claimant's extended illness, living abroad in remote areas for extended periods of time, or barriers to accessing information about the program led to the late filing. Absent circumstances consonant with the foregoing, good cause would not exist; thus, for example, a claimant's missing the deadline due to mere inattentiveness to the program's deadlines would not be sufficient to establish good cause.

The interim final rule did not alter any then-existing regulatory deadlines, nor did it impose any new deadlines (or any burden whatsoever) on claimants, but instead merely operated to relieve an administrative restriction, in the then-existing rule, on claim filing (such rule having been promulgated largely for the administrative convenience of OVC, which had found it, over the course of four years of program administration, to be unnecessary). In these respects, the final rule is the same.

OVC had intended to finalize this interim-final rule as part of a larger revision of the program rules shortly after publication of the interim-final rule, but that effort ended up not moving forward. Other priorities, including updating program rules for the Victims of Crime Act of 1984 (''VOCA'') Victim Assistance Program, and administration and oversight responsibilities relating to the substantial increase in VOCA funding that started in FY 2015, took priority after that.

The non-substantive updates to the citations are to ensure that the citations accurately point to the substantive provision originally intended when subpart A was promulgated in 2006, and when subpart B was promulgated in 2016. In 2017, many citations to provisions in Title 42 of the United States Code were reclassified to Title 34. In addition, 2 CFR part 200 was amended in 2020, and certain sections were shifted by one number. The updates herein adjust the citations to reflect the new locations of the same substantive provisions.

III. Regulatory Requirements

Executive Orders 12866 and 13563—Regulatory Review

This final rule has been drafted in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review'' section 1, General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

OVC has determined that this final rule is not a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review, section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This rule finalizes the 2011 interim final rule, which OVC also determined was not a ''significant regulatory action,'' without change.

Cost/Benefit Assessment

This regulation has no cost to state, local, or tribal governments, or to the private sector. It merely alleviates an administrative restriction on victim claim filing by permitting the OVC Director to allow late filing where the Director determines that this is appropriate. The ITVERP is funded by fines, fees, penalty assessments, and forfeitures paid by Federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury, and set aside in the Antiterrorism Emergency Reserve Fund, which is capped at $50 million in any given year. The cost to the Federal Government consists both of administrative expenses and amounts reimbursed to victims. Both types of costs depend on the number of claimants, prospective as well as retroactive. This rule is not expected to significantly increase the number of eligible claimants, and therefore OVC has determined that the negligible cost potentially associated with allowing certain late-filed claims to be processed is outweighed by considerations of fairness in the program's administration and the benefit of ensuring that U.S. victims otherwise eligible for, and in need of, reimbursement for injuries and losses from overseas terrorism are provided such reimbursement. This rule has not, and is not expected to, materially increase the overall budgetary impact of the ITVERP.

Administrative Procedure Act

This rule concerns matters relating to ''grants, benefits, or contracts,'' 5 U.S.C. 553(a)(2). It is therefore statutorily exempt from the requirement of notice and comment and a 30-day delay in the effective date. Moreover, to the extent that it ''recognizes an exemption or relieves a restriction'' on claimant filing, it is exempt from the 30-day delay in the effective date per 5 U.S.C. 553(d). Moreover, with regard to the citation corrections, OVC finds that notice and comment would be unnecessary because the citation updates are non-substantive—the underlying substantive provisions remain the same, and therefore good cause exists to dispense

with notice and comment per 5 U.S.C. 553(b)(B), and a delayed effective date, pursuant to 5 U.S.C. 553(d).

Although it was not required to do so, upon publication of the interim-final rule in 2011, OVC provided for post-promulgation public comment. OVC received two comments, one of which was not responsive. The only responsive comment advocated for a statutory-definition change beyond the scope of this rulemaking, questioned the cost of the program, requested that information about payments be posted on the internet, and opposed ''paying claims that are more than 3 years old and leaving that to the 'discreation' [sic] of the director . . . .'' OVC does, in fact, post detailed information on its website about program payments, with breakouts by number of claims, amounts paid in each expense category, and other claim processing information, and has done so since 2008. Moreover, the Director's discretion is limited to situations where a claimant shows good cause to waive the filing deadline. For example, in FY 2018, of the 36 new applications received during the reporting period, 4 were granted an extension; in FY 2019, of 33 new applicants, 1 was granted an extension. ITVERP is a very small program, both in terms of number of claims and amounts paid. It received an average of 35 claims per year from FY 2011 through FY 2019. The total amount paid for *all* claims added together in the FY 2017 reporting period was $264,734.07; in FY 2018 was $145,046, and in FY 2019 was $155,298. Consequently, the entire program has a de-minimis budgetary impact, and the limited number of extensions granted each year do not materially change that.

This rule finalizes that interim-final rule, which made a minor amendment to alleviate a procedural restriction on ITVERP claimants that might otherwise have led to the denial of meritorious claims from victims, even where such victims show good cause for delayed filing.

Executive Order 13132—Federalism

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Exec. Order No. 13132, 64 FR 43255 (Aug. 4, 1999), it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform.''

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This regulation has no cost to State, local, or tribal governments, or to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and bond forfeitures paid by Federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury. Therefore, an analysis of the impact of this regulation on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1995

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

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 94

Administrative practice and procedures, International terrorism, Victim compensation.

Accordingly, for the reasons set forth in the preamble, the Office of Justice Programs adopts the interim rule published April 11, 2011, at 76 FR 19909, as final without change and makes technical corrections to title 28, part 94 of the Code of Federal Regulations as follows:

PART 94—CRIME VICTIM SERVICES

■ 1. The authority citation for part 94 is revised to read as follows:

Authority: 34 U.S.C. 20103, 20106, 20110(a), 20111.

Subpart A—International Terrorism Victim Expense Reimbursement Program

§ 94.11 [Amended]

■ 2. Amend § 94.11 in paragraph (a) by removing ''42 U.S.C. 10603c'' and adding in its place ''34 U.S.C. 20106''.

§ 94.12 [Amended]

■ 3. Amend § 94.12 in paragraph (u) introductory text by removing ''42 U.S.C. 10603c(a)(3)(A)'' and adding in its place ''34 U.S.C. 20106(a)(3)(A)''.

§ 94.21 [Amended]

■ 4. Amend § 94.21 in paragraph (a) by removing ''42 U.S.C. 10603c(a)(3)(A)'' and adding in its place ''34 U.S.C. 20106(a)(3)(A)''.

Subpart B—VOCA Victim Assistance Program

§ 94.101 [Amended]

■ 5. Amend § 94.101 in paragraph (a) by removing ''42 U.S.C. 10603'' and adding in its place ''34 U.S.C. 20103'' and in paragraph (b) by removing ''42 U.S.C. 10604(a)'' and adding in its place ''34 U.S.C. 20110(a)''.

§ 94.102 [Amended]

■ 6. Amend § 94.102, in introductory text of the definition of *Direct services* or *services to victims of crime,* by removing ''42 U.S.C. 10603(d)(2)'' and adding in its place ''34 U.S.C. 20103(d)(2)''.

§ 94.103 [Amended]

■ 7. Amend § 94.103 in paragraph (b) introductory text by removing ''42 U.S.C. 10603(a)(2)'' and adding in its place ''34 U.S.C. 20103(a)(2)'' and in paragraph (g) by removing ''2 CFR 200.336'' and adding in its place ''2 CFR 200.337''.

§ 94.104 [Amended]

■ 8. Amend § 94.104 in paragraph (b) introductory text by removing ''42 U.S.C. 10603(a)(2)(A)'' and adding in its place ''34 U.S.C. 20103(a)(2)(A)'' and in paragraph (c) by removing ''42 U.S.C. 10603(a)(2)(B)'' and adding in its place ''34 U.S.C. 20103(a)(2)(B)''.

§ 94.106 [Amended]

■ 9. Amend § 94.106 in paragraph (a) by removing ''2 CFR 200.331'' and adding in its place ''2 CFR 200.332''.

§ 94.107 [Amended]

■ 10. Amend § 94.107 in paragraph (a) by removing ''42 U.S.C. 10603(b)(3)'' and adding in its place ''34 U.S.C. 20103(b)(3)''.

§ 94.108 [Amended]

■ 11. Amend § 94.108 in paragraph (b)(2) by removing ''42 U.S.C. 10604(h)'' and adding in its place ''34 U.S.C. 20110(h)''.

§ 94.111 [Amended]

■ 12. Amend § 94.111 by removing ''42 U.S.C. 10603(b)(1)'' and adding in its place ''34 U.S.C. 20103(b)(1)''.

§ 94.112 [Amended]

■ 13. Amend § 94.112 in paragraph (b) introductory text by removing ''42 U.S.C. 10603(b)(1)(B)'' and adding in its place ''34 U.S.C. 20103(b)(1)(B)''.

§ 94.113 [Amended]

■ 14. Amend § 94.113 in paragraph (b) by removing ''42 U.S.C. 10603(b)(1)(C)'' and adding in its place ''34 U.S.C. 20103(b)(1)(C)''.

§ 94.114 [Amended]

■ 15. Amend § 94.114 in paragraphs (a) and (b) by removing ''42 U.S.C. 10604(e)'' and adding in its place ''34 U.S.C. 20110(e)''.

Dated: January 11, 2023.

Maureen A. Henneberg,

Deputy Assistant Attorney General for Operations and Management, Office of Justice Programs.

[FR Doc. 2023–01023 Filed 1–19–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2023–0061]

RIN 1625–AA00

Safety Zone; Coast Guard PSU–312 Training Exercise South Bay, San Francisco Bay, San Francisco, CA

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of San Francisco Bay, near Treasure Island, San Francisco, CA, in support of the Coast Guard Port Security Unit (PSU)–312 training exercise. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the Coast Guard PSU–312 on-water training and associated operations. Unauthorized persons or vessels are prohibited from entering, transiting through, or remaining in the safety zone without permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective on January 21, 2023, from 9 a.m. through 6:30 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0061 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Anthony I. Solares, Waterways Management, U.S. Coast Guard; telephone (415) 399–3585, email *SFWaterways@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 Coast Guard received the final details of the training on January 12, 2023. It is impracticable to publish an NPRM because we must establish this safety zone by January 21, 2023, and lack sufficient time to provide a reasonable comment period and 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 protect personnel, vessels, and the marine environment in the navigable waters around the potentially hazardous on-water training and associated operations involving vessels firing blank rounds.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the Coast Guard PSU–312 training operations scheduled to occur on January 21, 2023, will be a safety concern for anyone within the designated exercise area. The on-water training will involve vessels firing blank rounds. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters surrounding the potentially hazardous activity.

IV. Discussion of the Rule

This rule establishes a safety zone around the Coast Guard PSU–312 training operations in the waters of the San Francisco Bay, near Treasure Island, San Francisco, CA, on January 21, 2023, from 9 a.m. until 6:30 p.m. The safety zone will encompass the navigable waters, from surface to bottom, within a circle formed by connecting all points 1,000 yards from the circle center at approximate position 37°49′15.3″ N, 122°21′38.5″ W (NAD 83); or as announced via Broadcast Notice to Mariners.

This regulation is needed to keep persons and vessels away from the immediate vicinity of the training operations to ensure the safety of personnel, vessels, and the marine environment. No vessel or person will be permitted to enter the safety zone without obtaining permission from the Captain of the Port Sector San Francisco (COTP) or a designated representative. A ''designated representative'' means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or officer designated by or assisting the COTP in the enforcement of the safety zone.

The COTP or the COTP's designated representative will notify the maritime community of periods during which this

zone will be enforced in accordance with 33 CFR 165.7, including but not limited to Broadcast Notice to Mariners.

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 limited duration and narrowly tailored geographic area of the safety zone. The zone encompasses approximately 0.75 square miles of the waterway for less than 10 hours. Although this rule restricts access to the water encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified to ensure the safety zone will result in minimum impact. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's 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 temporary safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry to the area surrounding the potentially hazardous Coast Guard training operations. It is categorically excluded from further review under paragraph L60 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 **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.T11–120 to read as follows:

§ 165.T11–120 Safety Zone; Coast Guard PSU–312 Training Exercise South Bay, San Francisco Bay, San Francisco, CA.

(a) *Location.* The following is a safety zone: The safety zone encompasses the navigable waters, from surface to bottom, within a circle formed by connecting all points 1,000 yards from the circle center at approximate position 37°49′15.3″ N, 122°21′38.5″ W (NAD 83); or as announced via Broadcast Notice to Mariners.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, or an officer designated by or assisting the Captain of the Port Sector San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart B 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) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced on January 21, 2023, from 9 a.m. through 6:30 p.m.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which the safety zone described in paragraph (a) of this section will be enforced in accordance with § 165.7, including but not limited to Broadcast Notice to Mariners.

Dated: January 17, 2023.

Taylor Q. Lam,

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

[FR Doc. 2023–01194 Filed 1–19–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–MORA–34555; Docket No. NPS–2022–0002; PPPWMORAS1 PPMPSPD1Z.YM0000]

RIN 1024–AE66

Mount Rainier National Park; Fishing

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service removes from the Code of Federal Regulations special fishing regulations for Mount Rainier National Park, including those that restrict the take of nonnative species. Instead, the National Park Service will publish closures and restrictions related to fishing in the Superintendent's Compendium for the park. This action helps implement a 2018 Fish Management Plan that aims to conserve native fish populations and restore aquatic ecosystems by reducing or eliminating nonnative fish.

DATES: This rule is effective on February 21, 2023.

ADDRESSES:

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and search for ''1024–AE66.''

Document Availability: The Mount Rainier National Park Fish Management Plan Environmental Assessment and Finding of No Significant Impact provide information and context for this rule and are available online at *https://parkplanning.nps.gov/mora* by clicking the link entitled ''Archived Projects'' and then clicking the link entitled ''2018 Mount Rainier National Park Fisheries Management Plan Environmental Assessment and Finding of No Significant Impact'' and then clicking the link entitled ''Document List.''

FOR FURTHER INFORMATION CONTACT: Kevin Skerl, Deputy Superintendent, Mount Rainier National Park, National Park Service; phone: (360) 569–2211; email: *kevin_skerl@nps.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Significance of the Park

Mount Rainier National Park encompasses 236,381 acres in west central Washington, on the western and eastern slopes of the Cascade Range. About 83 percent of the park is located in Pierce County and 17 percent is located in Lewis County. The park's northern boundary is approximately 65 miles southeast of the Seattle-Tacoma metropolitan area and 65 miles west of Yakima. The elevations of the park range from about 1,400 feet at the Tahoma Woods Administrative Site to 14,410 feet at the summit of Mount Rainier. About two million people visit the park annually, with most visitation (75 percent) occurring between June and September. In 1988, Congress designated approximately 97 percent (228,480 acres) of the park as wilderness under the Washington Park Wilderness Act.

The focal point of the park is Mount Rainier, a towering snow- and ice-covered volcano that is a prominent landmark in the Pacific Northwest. Mount Rainier is the second most seismically active and the most hazardous volcano in the Cascade Range. The 26 major glaciers that flank the upper mountain cover 35 square miles. Steep glaciated valleys and ice-carved peaks dominate the park landscape. The Carbon, Mowich, White, West Fork White, Nisqually, South Puyallup, and North Puyallup rivers and their tributaries carry water from Mount Rainier to Puget Sound. The Ohanapecosh and Muddy Fork Cowlitz flow into the Cowlitz River and on into the Columbia River. There are approximately 470 mapped rivers and streams, including approximately 383 perennial streams and 84 intermittent streams. With very few exceptions, park rivers and streams originate within the park. There are approximately 382 lakes and ponds, and over 3,000 acres of other wetland types (*e.g.,* mineral geothermal springs, waterfalls) in the park.

Fish Resources in the Park

The following 15 fish species are present in the rivers, streams and lakes within the park. Of these, eight are native and seven are nonnative.

No.	Scientific name	Common name	Occurrence
1	*Oncorhynchus mykiss*	rainbow trout	Native (in some locations).
2	*Oncorhynchus clarkii clarkii*	coastal cutthroat trout	Native.

No.	Scientific name	Common name	Occurrence
3	*Salvelinus confluentus*	bull trout	Native.
4	*Oncorhynchus kisutch*	coho salmon	Native.
5	*Oncorhynchus tshawytscha*	chinook salmon	Native.
6	*Oncorhynchus gorbuscha*	pink salmon	Native.
7	*Prosopium williamsoni*	mountain whitefish	Native.
8	*Cottus confusus*	shorthead sculpin	Native.
9	*Cottus cognatus*	slimy sculpin	Nonnative.
10	*Cottus rhotheus*	torrent sculpin	Nonnative.
11	*Oncorhynchus clarkii bouvieri*	Yellowstone cutthroat trout	Nonnative.
12	*Oncorhynchus clarkii lewisi*	westslope cutthroat trout	Nonnative.
13	*Salvelinus fontinalis*	brook trout	Nonnative.
14	*Gasterosteus aculeatus*	Alaskan stickleback, threespined stickleback	Nonnative.
15	*Oncorhynchus nerka*	kokanee salmon	Nonnative.

Fish populations naturally occur within the park in the nine large valley bottom rivers and their tributary junctions up to natural fish barriers. These rivers bear native fish populations of rainbow (steelhead) trout (*Oncorhynchus mykiss*), coastal cutthroat trout (*Oncorhynchus clarkii clarkii*), bull trout (*Salvelinus confluentus*), coho salmon (*Oncorhynchus kisutch*), chinook salmon (*Oncorhynchus tshawytscha*), pink salmon (*Oncorhynchus gorbuscha*), mountain whitefish (*Prosopium williamsoni*) and shorthead sculpin (*Cottus confusus*). Nonnative sculpins present in the rivers include slimy sculpin (*C. cognatus*) and torrent sculpin (*Cottus rhotheus*).

Prior to stocking efforts, there were no naturally occurring fish populations in any of the approximately 382 mapped lakes and ponds in the park. With the exception of those mentioned above, most of the mapped streams were also originally fishless. Early in the park's history, the National Park Service (NPS) and others, including the State of Washington, introduced nonnative stocks of rainbow trout (*Oncorhynchus mykiss*), Yellowstone cutthroat trout (*Oncorhynchus clarkii bouvieri*), westslope cutthroat trout (*Oncorhynchus clarkii lewisi*), brook trout (*Salvelinus fontinalis*) and kokanee salmon (*Oncorhynchus nerka*) to enhance recreational fishing. According to unpublished NPS records, official stocking occurred from 1915 through 1964 (49 years) in 38 streams, and from 1915 through 1972 (57 years) in 44 lakes. Stocking fish resulted in reproducing populations of nonnative fish in naturally fishless lakes. It also resulted in reproducing populations of nonnative fish in some rivers and streams where they compete with native fish. Additional unauthorized introductions of nonnative fish, including threespined stickleback (*Gasterosteus aculeatus*), have occurred since stocking ended. Reproducing populations of nonnative fish are now present in approximately 35 lakes and all of the park watersheds, including many streams and the nine major rivers. All lakes with reproducing nonnative fish populations are in designated wilderness with the exception of Littorals Pond (White River watershed) and Tipsoo Lake.

The presence of nonnative fish in the park has had widespread adverse effects on the distribution, abundance, age structure, genetics, and behavior of native fish species, amphibians, and other aquatic life. Nonnative fish prey on and compete with native fish, particularly bull trout. As a result, over time, populations of native fish within and outside the park have likely diminished where brook trout and other nonnative fish populations have been established. The U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) have listed populations of bull trout, chinook salmon, and steelhead within the park as threatened under the Endangered Species Act (ESA). In 2010, the USFWS designated approximately 30 miles of streams in the park as bull trout critical habitat. In 2015, the USFWS issued a Bull Trout Recovery Plan that identified actions the NPS should take to protect bull trout within the park.

NPS Authority To Manage Fishing

The NPS has sole and exclusive jurisdiction over the lands and waters within Mount Rainier National Park. 16 U.S.C. 95. The park's enabling act directs the Secretary of the Interior, acting through the NPS, to make such regulations as the Secretary deems necessary or proper to care for the park, including regulations that provide against the wanton destruction of the fish and game found within the park, and against their capture or destruction for the purposes of merchandise or profit. 16 U.S.C. 92. The NPS administers the park as a unit of the National Park System and has the authority to regulate the use of the park as it considers necessary or proper. 54 U.S.C. 100751(a). This includes the authority to regulate activities on water located within the park that is subject to the jurisdiction of the United States. 54 U.S.C. 100751(b).

NPS Management Framework for Fishing

General NPS fishing regulations are found in 36 CFR 2.3 and apply to all units of the National Park System. For example, section 2.3(d)(4) prohibits commercial fishing in System units, except where specifically authorized by Federal statute. Recreational fishing is allowed within the System in accordance with state law, provided that the state law does not conflict with NPS fishing regulations. 36 CFR 2.3(a). Special fishing regulations are found in 36 CFR part 7 and apply only in specific System units that have promulgated special regulations for this purpose. Other closures and restrictions related to fishing are established by the Superintendent under his or her discretionary authority in 36 CFR 1.5. This authority allows Superintendents to close all or a portion of a park area to a specific use or activity or impose conditions or restrictions on a use or activity. Pursuant to 36 CFR 1.7(b), these actions do not appear in 36 CFR, but are compiled and maintained in what is commonly known as the Superintendent's Compendium. The Superintendent's Compendium is typically available on the System unit's website. Actions taken by the Superintendent under the authority in 36 CFR 1.5 may not conflict with regulations found in the CFR, including the general fishing regulations in section 2.3.

NPS Management of Fishing in the Park

Special fishing regulations for the park are found in 36 CFR 7.5(a). The NPS promulgated these regulations in 1969 (34 FR 17520) and last amended them in 1976 (41 FR 14863). The

regulations close the following areas to all fishing: (i) Tipsoo Lake; (ii) Shadow Lake; (iii) Klickitat Creek above the White River entrance water supply intake; (iv) Laughingwater Creek above the Ohanapecosh water supply intake; (v) Frozen Lake; (vi) Reflection Lakes; and (vii) Ipsut Creek above the Ipsut Creek Campground water supply intake. 36 CFR 7.5(a)(1). The special regulations also close the Ohanapecosh River and its tributaries to all fishing except for fishing with artificial flies. 36 CFR 7.5(a)(2). The regulations state that there shall be no minimum size limit on fish that may be possessed. 36 CFR 7.5(a)(3). The regulations state that the daily catch and possession limit for fish taken from park waters shall be six pounds and one fish, not to exceed 12 fish. 36 CFR 7.5(a)(4).

Other closures and restrictions related to fishing appear in the Superintendent's Compendium for the park, which is available on the park's website at *https://www.nps.gov/mora/learn/management/lawsandpolicies.htm.* Several of these closures and restrictions are intended to conserve native fish species and reduce or eliminate nonnative species. The Compendium states that all native fish species caught in rivers and streams must be released, but that kokanee and brook trout (both nonnative species) may be retained with no limit. The purpose of this Compendium action is to protect native fish species by requiring catch-and-release and to reduce populations of nonnative species by allowing them to be removed from the park. The Compendium prohibits multipoint hooks with barbs in rivers and streams to cause less injury to native species that will be released. The Compendium prohibits lead fishing tackle anywhere in the park to avoid poisoning aquatic biota and humans. The Compendium closes Fryingpan Creek above the confluence of the White River to all fishing. This closure protects native fish species (bull trout, chinook salmon, and steelhead) that are listed as threatened under the ESA. The Compendium also closes Ghost Lake and Edith Creek Basin above the Paradise water supply to protect the potable water supply for White River and Paradise. The Compendium establishes fishing seasons for rivers and streams to protect the spawning season of listed, native species. Where fishing is allowed in lakes, there are no seasonal closures or limits on retaining any fish species because, as noted above, fish are not native to lakes within the park.

In September 2017, the NPS published a Fish Management Plan/Environmental Assessment (the Plan). The purpose of the Plan is to direct long-term management for fish within lakes, rivers and streams within the park. During the development of the Plan, the NPS solicited information from the USFWS, the NMFS, the Washington Department of Fish and Wildlife (WDFW), the Washington State Historic Preservation Office, and six affiliated American Indian tribes: the Nisqually Tribe of Indians, the Muckleshoot Indian Tribe, the Cowlitz Indian Tribe, the Puyallup Tribe of Indians, the Squaxin Island Tribe, and the Confederated Tribes and Bands of the Yakama Nation. The U.S. Forest Service, Mount Baker-Snoqualmie National Forest, also submitted comments during the public scoping period that occurred before the Plan was published. The Plan was open for a 30-day public comment period.

On August 28, 2018, the Regional Director for Department of the Interior Unified Regions 8, 9, and 10 (formerly the Pacific West Region) approved a Finding of No Significant Impact (FONSI) selecting Alternative 2 in the Plan for implementation. This alternative calls for site-specific management actions to encourage recreational fishing opportunities for nonnative species and to protect native fish and habitat. In addition to increasing recreational angling opportunities for nonnative species, the alternative calls for suppressing or eradicating nonnative fish populations through administrative actions such as gillnetting, seining, electrofishing, and piscicides in selected locations. The selected alternative is consistent with actions required by the 2015 Bull Trout Recovery Plan issued by the USFWS. The NPS expects the eradication or suppression of nonnative fish to result in the increased survival and abundance of threatened and endangered species (bull trout, chinook salmon and steelhead) and improved habitat for native species. The Plan, which contains a full description of the purpose and need for taking action, the alternatives considered, and the environmental impacts associated with the considered alternatives, and the FONSI may be viewed on the park's planning website at *https://parkplanning.nps.gov/mora* by clicking on the link entitled ''Archived Projects'' and then clicking the link entitled ''2018 Mount Rainier National Park Fisheries Management Plan Environmental Assessment and Finding of No Significant Impact'' and then clicking the link entitled ''Document List.''

Final Rule

This rule removes special fishing regulations for the park that interfere with the successful implementation of the fish management strategy identified in the FONSI. These include the following closures and restrictions that limit the take of nonnative fish: (1) closures at Ipsut Creek and (except for artificial flyfishing) the Ohanapecosh River; and (2) a daily catch and possession limit of six pounds and one fish, not to exceed 12 fish. Removing these closures and restrictions will create new angling opportunities for nonnative species that are currently not authorized by 36 CFR 7.5. The other closures and restrictions currently codified in the special regulations will be relocated to and maintained in the Superintendent's Compendium because either they are necessary to protect the domestic potable water supply for White River, Sunrise, Ohanapecosh, and Paradise (the closures of Frozen Lake and streams with identified water supply intakes); or to protect fragile riparian vegetation (the closures of Tipsoo Lake, Shadow Lake and Reflection Lakes). Closures and restrictions in the special regulations also apply to the take of native fish species. These will be retained or modified in the Superintendent's Compendium, consistent with the selected alternative in the FONSI, to help restore the natural abundance, diversity, dynamics, distribution, habitats and behaviors of native fish populations that were present in the park prior to the introduction of nonnative fish. The administrative flexibility offered by the Superintendent's Compendium, which in most circumstances can be modified without notice and comment rulemaking (see 36 CFR 1.5(b)), provides a feasible and responsive method to meet the strategic goals identified in the FONSI to utilize adaptive management to alter management activities when needed based on monitoring and best available science. NPS regulations at 36 CFR 1.7(b) require the Superintendent to update the Compendium at least annually. The NPS will ensure that the public has an opportunity to provide meaningful input prior to updating any closures or restrictions related to fishing in the Compendium.

Consolidating all fishing closures and restrictions in the Compendium will make them more accessible and user-friendly for the public. Instead of having to look in two different places (the special regulations in 36 CFR 7.5 and the Superintendent's Compendium on the park's website), the public will be

able to find all closures and restrictions related to fishing in one place. The NPS has already done this, informally, by producing a fishing pamphlet that is available at the park's website at *https://www.nps.gov/mora/planyourvisit/fishing-and-boating.htm.* Moving all of the closures and restrictions related to fishing into the Compendium will consolidate the official versions of them in one place for legal purposes. Centralizing them in the Compendium will increase compliance, strengthen enforcement, and decrease public confusion and frustration. The NPS routinely responds to inquiries and requests for clarification from the State of Washington and members of the public regarding fishing opportunities and rules within the park. Placing all fishing closures and restrictions in the Compendium will help visitors understand the rules and become better stewards of fishery resource at the park. In order to direct the public to the Compendium, the NPS is replacing the existing language in paragraph (a) of section 7.5 with a general statement that the Superintendent will establish fishing closures and restrictions, based on management objectives described in the park's resource management plans, in accordance with the criteria and procedures in 36 CFR 1.5 and 1.7, including publication in the Superintendent's Compendium. The rule also states that fishing in closed waters or violating a fishing restriction established by the Superintendent is prohibited. Similar language is used in the special regulations for other NPS units, including Glacier National Park (36 CFR 7.3) and Rocky Mountain National Park (36 CFR 7.7).

Summary of Public Comments

The NPS published a proposed rule in the **Federal Register** on January 11, 2022 (87 FR 1374). The NPS accepted public comments on the proposed rule for 60 days via the mail, hand delivery, and the Federal eRulemaking Portal at *https://www.regulations.gov.* Comments were accepted through March 14, 2022. A total of 27 comments were submitted and reviewed. Many commenters supported the proposed rule and did not raise any issues or suggest any changes. Some commenters raised concerns or questions about the proposed rule that the NPS summarizes and responds to below. After considering the public comments and after additional review, the NPS did not make any changes in the final rule.

1. Comment: One commenter asked if there is oversight of management decisions implemented through the Superintendent's Compendium and whether the WDFW would be involved in such management decisions to ensure the protection of native fish species.

NPS Response: NPS regulations at 36 CFR 1.5 require the Superintendent to follow specific procedures and requirements in order to use discretionary authority to implement closures and restrictions related to visitor use of park areas. The Superintendent must prepare a written determination justifying each action and use appropriate methods to notify the public of any such closures or restrictions. All such actions must be listed in the Compendium, which must be available to the public and updated at least annually. Compendium actions must be consistent with federal law and policy and may not be highly controversial or otherwise significant without going through a public notice and comment review process.

A primary purpose of the Plan is to promote the recovery of native fish species in the park. The NPS will continue to collaborate with the WDFW as it implements the selected alternative in the FONSI to achieve this goal. Continued collaboration may include identifying barriers to restoration of native fish species and ecosystem recovery within the park and, where possible, addressing issues outside the park such as fish stocking practices and barriers to fish migration downstream of the park. The NPS will ensure that the public and its partners, including WDFW, have an opportunity to provide meaningful input prior to updating any closures or restrictions related to fishing in the Compendium.

2. Comment: Several commenters questioned how the NPS will enforce requirements to release native species that are incidentally caught in rivers and streams as bycatch. One commenter suggested that dynamic closures of park areas would more effectively reduce bycatch and be more easily enforced.

NPS Response: In some situations, catch and release requirements may be more difficult to enforce than closures that prohibit all fishing in certain locations; however, enforcing catch and release requirements is not unique and occurs in many park areas with recreational fishing. The NPS believes that placing all closures and restrictions related to fishing in the Compendium will increase compliance and strengthen enforcement because it will be easier for the public understand what is allowed. The NPS has implemented closures in areas where the probability of ESA-protected bycatch is high (*e.g.,* Fryingpan) and also seasonal restrictions to protect spawning native species. The NPS will evaluate and modify management actions as needed if monitoring shows unanticipated adverse effects on native fish species.

3. Comment: Several commenters emphasized the importance of educating anglers to increase compliance with fishing closures and restrictions. One commenter suggested the NPS develop and promote interactive educational classes and activities to inform visitors about fishing rules and aquatic resources in the park.

NPS Response: The NPS agrees that educating anglers is critical to compliance and has developed a robust educational strategy to communicate how closures and restrictions will help achieve the purpose and goals of the Plan. In addition to the continued use and distribution of the fishing pamphlet, the NPS is developing a software application and a fishing guide that will provide information about fishing in the park and the status of fish species and habitats. The NPS will also send roving interpreters throughout the park to provide information directly to recreational anglers.

4. Comment: One commenter asked whether the rule would adversely affect recreational fishing if less fish are present in the park.

NPS Response: Catch and release fishing opportunities will continue to be available in most rivers and streams for some time during implementation of the Plan. A few small lakes with small fish populations may be fished out by anglers. At the same time, there will be widespread benefits to native fish and amphibian populations in areas where nonnative fish are removed, which will increase the ability of anglers and other visitors to see and to interact with native fish, amphibians and other species in their habitats throughout the park. Because it will likely take decades before the NPS can implement fish removal programs throughout the park, diminished fishing opportunities would occur in stages over time, reducing the overall impact of this recreational loss. Because fishing has consistently been rated low on the scale of recreational activities that visitors engage in during visitor surveys, this loss would likely be imperceptible to most park visitors.

5. *Comment:* One commenter asked the NPS to support local businesses and restaurants by giving them preferential rights to fish in the park or allowing them to use nonnative fish that are removed through administrative actions such as gillnetting, seining and electrofishing.

NPS Response: NPS regulations at 36 CFR 2.3(d)(4) prohibit commercial fishing in National Park System units, except where specifically authorized by

Federal statute The park's enabling act does not authorize commercial fishing. Instead, it directs the NPS to prohibit the capture of fish for merchandise or profit. As a result, the NPS cannot allow local businesses or restaurants to take fish in the park for commercial purposes. Most administrative actions capturing nonnative fish occur in backcountry locations where transportation of the fish outside of the park is not feasible. In most cases, the fish are too small to have value for local businesses and restaurants.

6. *Comment:* One commenter stated native fish populations could be restored more quickly if there are no catch limits on nonnative fish species except those that are vital for maintaining potable water in the White River, Sunrise, Ohanapecosh, and Paradise waterways.

NPS Response: The NPS agrees that through the capture of nonnative species, anglers can play an important role in the conservation and recovery of native species in the park. In many lakes, rivers and streams in the park, anglers are essential for suppressing nonnative species. For these reasons, the rule would remove the daily catch limit in the special regulations in order to allow the retention of brook trout and kokanee salmon from rivers and streams and all nonnative fish from lakes that are open to recreational fishing. Except for brook trout and kokanee salmon, anglers may not retain other nonnative species from rivers and streams because those species are too difficult to distinguish from native species that must be released. The Compendium will continue to close Tipsoo Lake, Shadow Lake and Reflection Lakes to all fishing in order to protect fragile riparian vegetation.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled ''Cost-Benefit and Regulatory Flexibility Threshold Analyses: Proposed Rule to Remove Special Regulations for Fishing at Mount Rainier National Park.'' The document may be viewed on the park's planning website at *https://parkplanning.nps.gov/mora* by clicking on the link entitled ''Archived Projects'' and then clicking the link entitled ''2018 Mount Rainier National Park Fisheries Management Plan Environmental Assessment and Finding of No Significant Impact'' and then clicking the link entitled ''Document List'' and then clicking on the link entitled ''Fish Management Plan FONSI.''

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule will not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects use of federally administered lands and waters. It has no outside effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. The NPS has evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and has determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. During scoping for the Plan, the NPS solicited comments from six affiliated American Indian tribes: the Nisqually Tribe of Indians, the Muckleshoot Indian Tribe, the Cowlitz Indian Tribe, the Puyallup Tribe of Indians, the Squaxin Island Tribe, and the Confederated Tribes and Bands of the Yakama Nation. The NPS will continue to work with these tribes throughout the implementation of the selected alternative in the FONSI.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

The NPS has prepared the Plan to determine whether this rule will have a significant impact on the quality of the human environment under the NEPA. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because of the FONSI. A copy of the Plan and FONSI may be viewed on the park's planning website at *https://parkplanning.nps.gov/mora* by clicking on the link entitled ''Archived Projects'' and then clicking the link entitled ''2018 Mount Rainier National Park Fisheries Management Plan Environmental Assessment and Finding of No Significant Impact'' and then clicking the link entitled ''Document List.''

Effects on the Energy Supply (Executive Order 13211)

This rulemaking is not a significant energy action under the definition in Executive Order 13211; the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the rule has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10–137 and D.C. Code 50–2201.07.

■ 2. In § 7.5, revise paragraph (a) to read as follows:

§ 7.5 Mount Rainier National Park

(a) *Fishing.* (1) Fishing closures and restrictions are established by the Superintendent based on management objectives for the preservation of the park's natural resources.

(2) The Superintendent may establish closures and restrictions, in accordance with the criteria and procedures of § 1.5 of this chapter, on any activity pertaining to fishing, including, but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, creel, and possession limits.

(3) Except in emergency situations, the Superintendent will notify the public of any such closures or restrictions through one or more methods listed in § 1.7 of this chapter, including publication in the Superintendent's Compendium (or written compilation) of discretionary actions referred to § 1.7(b).

(4) Fishing in closed waters or violating a condition or restriction established by the Superintendent under this paragraph (a) is prohibited.

* * * * *

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–27483 Filed 1–19–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AR50

Emergent Suicide Care

Correction

In rule document 2023–00298 appearing on pages 2526–2537 in the issue of Tuesday, January 17, 2023, make the following correction:

On page 2526, in the second column, after the **DATES** heading, in the *Effective date* section, in the second line, ''March 20, 2023'' should read ''January 17, 2023''.

[FR Doc. C1–2023–00298 Filed 1–18–23; 4:15 pm]

BILLING CODE 0099–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0787; FRL–10504–01–OCSPP]

Fluridone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fluridone in or on multiple commodities which are identified and discussed later in this document. SePRO Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 20, 2023. Objections and requests for hearings must be received on or before March 21, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0787, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0787 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before March 21, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0787, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerances

In the **Federal Registers** of March 22, 2022 (87 FR 16133) (FRL–9410–11) and June 22, 2022 (87 FR 37287) (FRL–9410–02), EPA issued documents pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 1F8940 and PP 2F8996, respectively) by SePRO Corporation, 11550 N. Meridian Street, Suite 600, Carmel, IN 46032. The petitions requested that 40 CFR part 180.420 be amended by establishing tolerances for residues of the herbicide fluridone in or on the raw agricultural commodities of Berry and small fruit, group 13–07; Fruit, citrus, group 10–10; Fruit, pome, group 11–10; Tropical and subtropical, small fruit, edible peel subgroup 23A; Tropical and subtropical, medium and large fruit, smooth, inedible peel, subgroup 24B; Hop, dried cones; Nut, tree, group 14–12; and Rice, grain at 0.1 parts per million (ppm) (PP 1F8940); Animal feed, nongrass, group 18 and Grass, forage, fodder and hay, group 17 at 0.15 ppm (PP 1F8940); and Peanut at 0.1 ppm and Peanut, hay at 0.15 ppm (PP 2F8996). The petitions also requested to remove the existing tolerances for indirect or inadvertent residues of the herbicide fluridone, including its metabolites and degradates, from 40 CFR 180.420(d) in or on Berry, group 13; Fruit, citrus, group 10; Fruit, pome, group 11; Hop, dried cones; Nut, tree, group 14 at 0.1 ppm; Animal feed, nongrass, group 18 and Grass, forage at 0.15 ppm (PP 1F8940); and the existing time-limited tolerances for residues of the herbicide fluridone, including its metabolites and degrades, from 40 CFR 180.420(b) in or on Peanut and Peanut, hay at 0.1 ppm (PP 2F8996). Those documents referenced summaries of the petitions prepared by SePRO Corporation, which are available in the docket, *https://www.regulations.gov.* Comments were received in response to the March 22, 2022, Notice of Filing (PP 1F8940). EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is removing the following individual commodities from 40 CFR 180.420(a)(2), because the new crop group/subgroup tolerances established in this action will cover these commodities: pistachio (in crop group 14–12), tangerine (in crop group 10–10), pomegranate (in crop subgroup 24B), and avocado (in crop group 24B). Additionally, based on standard commodity definitions, EPA is updating the petitioned-for commodity definition ''Tropical and subtropical, medium and large fruit, smooth, inedible peel, subgroup 24B'' to ''Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B.''

III. Aggregate Risk Assessment and Determination of Safety

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

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

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

making its safety determination for the new rulemaking.

EPA has previously published tolerance rulemakings in 2016, 2020, and 2022 for fluridone in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to fluridone and established tolerances for residues of that chemical. EPA is incorporating previously published sections from these rulemakings as described further in this rule, as they remain unchanged.

Toxicological profile. For a discussion of the toxicological profile for fluridone, see Unit III.A. of the May 18, 2020, final rule (85 FR 29633) (FRL–10007–09).

Toxicological points of departure/ Levels of concern. For a summary of the toxicological points of departure and levels of concern for fluridone used for the human health risk assessment, see Unit III.B. of the February 17, 2016, final rule (81 FR 7982) (FRL–9941–69).

Exposure assessment. EPA's dietary exposure assessments have been updated to include the additional exposure from the petitioned-for tolerances for fluridone. Acute and chronic unrefined dietary exposure assessments were performed for fluridone that incorporated tolerance-level residues, 100% crop treated (PCT) assumptions, default processing factors, and empirical processing factors where available. These assessments were revised to reflect the updated Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID), Version 4.02, which incorporates 2005–2010 consumption data from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The acute and chronic estimated drinking water concentrations (EDWCs) of 150 parts per billion (ppb) and 107 ppb, respectively, are unchanged from the May 18, 2020, final rule and were directly incorporated into the dietary assessments. A cancer dietary assessment was not conducted as fluridone is classified as ''not likely'' to be a human carcinogen. The residential exposure assessment also has not changed since the May 18, 2020, final rule because there are no proposed new residential uses. For a summary of the dietary exposure from drinking water and non-dietary exposure, see Unit III.C. of the May 18, 2020, final rule.

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

Safety factor for infants and children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.D. of the May 18, 2020, final rule for a discussion of the Agency's rationale for that determination.

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

Acute dietary risks are below the Agency's level of concern: 2.5% of the aPAD for all infants (<1 year old), the population group receiving the greatest exposure. Chronic dietary risks are below the Agency's level of concern: 7.6% of the cPAD for all infants (<1 year old), the population group receiving the greatest exposure. The combined short-term food, water, and residential exposures result in aggregate MOEs of 1,300 for adults and 1,800 for children. The Agency's level of concern for fluridone is an MOE of 100 or below, and these MOEs are therefore not of concern. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for fluridone. Finally, EPA has concluded that fluridone is not expected to pose a cancer risk, given the lack of evidence of carcinogenicity in the database.

Therefore, based on the risk assessments and information described above, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to fluridone residues. Detailed information on this action can be found in the document titled ''Fluridone. Human Health Risk Assessment for the Section 3 Registration Action on Pome Fruit (Crop Group 11–10); Berry and Small Fruit (Crop Group 13–07); Grass Forage (Crop Group 17); Non-grass Animal Feed (Crop Group 18); Tropical and Subtropical, Small Fruit, Edible Peel (Crop Subgroup 23A); Rice; Peanut; Hops; and Crop Group Conversions/ Expansions.'' in docket ID EPA–HQ–OPP–2021–0787.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available in the Pesticide Analytical Manual (PAM) Volume II to enforce the tolerance expression in plant and animal commodities. A Quick, Easy, Cheap, Effective, Rugged, and Safe (QuEChERS) multiresidue method (Method No. A0013–02) is also available for determining residues of fluridone in various crop commodities, except acidic commodities. This QuEChERS method is considered marginally adequate for determining residues in acidic commodities. These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). Codex has not established MRLs for fluridone.

C. Response to Comments

Two comments were received in response to the Notice of Filing published in the **Federal Register** of March 22, 2022 (87 FR 16133) (FRL–9410–11). Neither comment was

accompanied by any substantiation nor data supporting a conclusion that the tolerances being established in this action do not meet the FFDCA safety standard. Although EPA recognizes that some individuals would oppose any use of pesticides on food, section 408 of the FFDCA authorizes EPA to set tolerances for residues of pesticide chemicals in or on food when it determines that the tolerance meets the safety standard imposed by that statute. Upon review of the available information, EPA concludes that these tolerances would be safe.

V. Conclusion

Therefore, tolerances are established for residues of fluridone under 40 CFR 180.420(a)(2) in or on the following raw agricultural commodities: Animal feed, nongrass, group 18 at 0.15 ppm; Berry and small fruit, group 13–07 at 0.1 ppm; Fruit, citrus, group 10–10 at 0.1 ppm; Fruit, pome, group 11–10 at 0.1 ppm; Grass, forage, fodder and hay, group 17 at 0.15 ppm; Hop, dried cones at 0.1 ppm; Nut, tree, group 14–12 at 0.1 ppm; Peanut at 0.1 ppm; Peanut, hay at 0.15 ppm; Rice, grain at 0.1 ppm; Tropical and subtropical, small fruit, edible peel subgroup 23A at 0.1 ppm; and Tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B at 0.1 ppm.

In addition, EPA is removing the established tolerances for indirect or inadvertent residues of fluridone under 40 CFR 180.420(d) in or on the following commodities: Animal feed, nongrass, group 18 at 0.15 ppm; Berry, group 13 at 0.1 ppm; Fruit, citrus, group 10 at 0.1 ppm; Fruit, pome, group 11 at 0.1 ppm; Grass, forage at 0.15 ppm; Hop, dried cones at 0.1 ppm; and Nut, tree, group 14 at 0.1 ppm. Additionally, EPA is removing the established Section 18 emergency exemption tolerances under 40 CFR 180.420(b) in or on Peanut and Peanut, hay at 0.1 ppm. Finally, EPA is removing the established tolerances from 40 CFR 180.420(a)(2) in or on the following individual raw agricultural commodities as they are redundant with the established crop group/subgroup tolerances being established in this rulemaking: Avocado, Pistachio, Pomegranate, and Tangerine at 0.1 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 13, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

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

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

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

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

■ 2. In § 180.420:

■ a. In paragraph (a)(2) amend the table by:

■ i. Removing the entry for ''Avocado'';

■ ii. Adding in alphabetical order the entries ''Animal feed, nongrass, group 18''; ''Berry and small fruit, group 13–07''; ''Fruit, citrus, group 10–10''; ''Fruit, pome, group 11–10''; ''Grass, forage, fodder and hay, group 17''; ''Hop, dried cones''; ''Nut, tree, group 14–12''; ''Peanut''; ''Peanut, hay '';

■ iii. Removing the entries for ''Pistachio'' and ''Pomegranate'';

■ iv. Adding in alphabetical order the entry ''Rice, grain'';

■ v. Removing the entry for ''Tangerine'';

■ vi. Adding in alphabetical order the entries ''Tropical and subtropical, small fruit, edible peel, subgroup 23A''; and ''Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B''.

■ b. Removing and reserving paragraph (b).

■ c. In paragraph (d), amend the table by removing the entries for ''Animal feed, nongrass, group 18''; ''Berry, group 13''; ''Fruit, citrus, group 10''; ''Fruit, pome, group 11''; ''Grass, forage''; ''Hop, dried cones''; and ''Nut, tree, group 14''

The additions read as follows:

§ 180.420 Fluridone; tolerances for residues.

(a) * * *

Commodity	Parts per million
Animal feed, nongrass, group 18	0.15
Berry and small fruit, group 13–07	0.1
* * * * * * *	
Fruit, citrus, group 10–10	0.1
Fruit, pome, group 11–10	0.1
* * * * * * *	
Grass, forage, fodder and hay, group 17	0.15
* * * * * * *	
Hop, dried cones	0.1
* * * * * * *	
Nut, tree, group 14–12	0.1
Peanut	0.1
Peanut, hay	0.15
* * * * * * *	
Rice, grain	0.1
* * * * * * *	
Tropical and subtropical, small fruit, edible peel, subgroup 23A	0.1
Tropical and subtropical, medium to large fruit, smooth, inedible peel, subgroup 24B	0.1

(2) * * *

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[FR Doc. 2023–00949 Filed 1–19–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278, FCC 20–186; FR ID 122726]

Limits on Exempted Calls Under the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces the effective date for the rules implementing section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) per the *TCPA Exemptions Order,* published on February 25, 2021. Specifically, compliance is required for the Telephone Consumer Protection Act (TCPA) exemptions for artificial or prerecorded voice calls made to residential telephone lines to ensure each satisfies the TRACED Act's requirements to identify who can call, who can be called, and any call limits. Compliance is also required with the limits on the number of calls that can be made under the exemptions for non-commercial calls to a residence; commercial calls to a residence that do not include an advertisement or constitute telemarketing; tax-exempt nonprofit organization calls to a residence; and Health Insurance Portability and Accountability Act (HIPPA)-related calls to a residence. Finally, callers must have mechanisms in place to allow consumers to opt out of any future calls.

DATES: The amendments to 47 CFR 64.1200(a)(3)(ii) through (v), (b)(2) and (3), and (d), published at 86 FR 11443 (Feb. 25, 2021), are effective July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith of the Consumer and Governmental Affairs Bureau, Consumer Policy Division, at (717) 338–2797 or *Richard.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that the Office of Management and Budget (OMB) approved the information collection requirements in § 64.1200(a)(3)(ii) through (v), (b)(2) and (3), and (d) on September 15, 2021.

The Commission publishes this document as an announcement of the effective date of the rules.

In a final rule (FCC 22–100), released on December 27, 2022, and published elsewhere in this issue of the **Federal Register**, the Commission amended rule 47 CFR 64.1200(a)(3) to allow callers the option of obtaining either oral or written consent if they wish to make more calls than the numerical limits on exempted artificial or prerecorded voice message calls to residential telephone lines and announced the compliance date for the amended rule.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–00634 Filed 1–19–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 22–100; FR ID 122724]

Limits on Exempted Calls Under the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) amends its rules to allow callers the option of obtaining either oral or written consent if they wish to make more calls than the numerical limits on exempted artificial or prerecorded voice message calls to residential telephone lines and affirms the numerical limits and opt-out requirements on such calls.

DATES: *Effective date:* July 20, 2023.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith of the Consumer and Governmental Affairs Bureau at (717) 338–2797 or *Richard.Smith@fcc.gov.* For information regarding the Paperwork Reduction Act (PRA) information collection requirements contained in the PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918, or *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration and Declaratory Ruling (Order on Reconsideration) in CG Docket No. 02–278; FCC 22–100, adopted on December 22, 2022, and released on December 27, 2022. The full text of document FCC 22–100 is available online at ECFS—Filing Details (*fcc.gov*) or *https://docs.fcc.gov/public/attachments/FCC-22-100A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Final Paperwork Reduction Act of 1995 Analysis

The Order on Reconsideration contains non-substantive modifications to information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. On January 4, 2023, these modifications were submitted to the Office of Management and Budget (OMB) and approved as non-substantive changes. Because these changes are non-substantive, there is no new or modified 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.

Congressional Review Act

The Commission sent a copy of document FCC 22–100 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. On reconsideration of the *Telephone Consumer Protection Act (TCPA) Exemptions Order,* CG Docket No. 02–278, Report and Order, published at 86 FR 11443 (Feb. 25, 2021), we revise the Commission's rule requiring prior express written consent to make informational calls over the numerical limits to permit such callers to obtain the necessary consent either orally or in writing. We decline, however, to revise any of the numerical limitations on the number of exempt non-telemarketing calls to residential lines that we established in the *TCPA Exemptions Order.* We also conclude that the differing numerical limitations for different categories of exempt calls to residential lines are both constitutional and necessary to advance the health and safety of consumers. We also retain the opt-out requirements for exempt informational calls. Finally, we decline to revisit the limitations on package delivery notifications to wireless numbers that have been in place since 2015 and confirm that the Commission's 2016 declaratory ruling on calls by utilities to wireless numbers applies equally to similar calls made to residential lines.

A. Consent Requirements for Exempted Calls to Residential Lines

2. We grant petitioners' request that we clarify that callers may obtain consent either orally or in writing to exceed the numerical limits on artificial or prerecorded voice calls to residential telephone lines made under the exemptions contained in § 64.1200(a)(3)(ii) through (v) of our rules. We agree with the petitioners and commenters, including both industry and consumer organizations, that the Commission did not intend to require that such callers obtain consent only in writing. While the text of the *TCPA Exemptions Order* did not specify that consent must be obtained in writing, we agree with petitioners that the amended rule implementing the numerical limitations appears to require prior express written consent to exceed those limitations. As a result, we amend § 64.1200(a)(3) to make clear that consent for informational (*i.e.,* non-telemarketing) calls to residential telephone numbers can be obtained orally or in writing, consistent with longstanding Commission rules and precedent, as discussed below.

3. We agree with petitioners and commenters that there is no reason for the consent requirements for informational calls to residential lines differ from the consent requirements for informational calls to wireless numbers, which allow for either oral or written consent. In addition, as some commenters note, to extend the written consent requirement to informational calls that include calls from utilities and healthcare providers could impair the ability of these callers to provide important public safety information to consumers, though we note that to the extent such calls are ''necessary in any situation affecting the health and safety of consumers,'' they would fall under the exemption for ''calls made for emergency purposes'' and thus would not require prior express consent.

4. The Commission's rules prior to adoption of the *TCPA Exemptions Order* did not require prior express written consent for artificial or prerecorded voice message calls made under any of the exemptions for calls to residential lines. The *TCPA Exemptions Order* expressed no intent to amend these rules to require written consent to make informational artificial or prerecorded voice calls to residential lines, and it provided no justification for such a requirement. In fact, the text of the *TCPA Exemptions Order* refers only to ''prior express consent'': ''callers can make more than three non-commercial calls using an artificial or prerecorded voice message within any consecutive thirty-day period by obtaining the *prior express consent* from the called party, including by using an exempted call to obtain consent.'' The Commission's rules distinguish ''prior express consent'' from ''prior express written consent.'' Only the latter requires consent to be obtained in writing. To obtain consent by ''using an exempted call'' strongly suggests that the Commission contemplated that such callers could obtain consent orally while communicating with the called party.

5. In addition, the Commission's longstanding precedent has expressly limited the written consent requirement only to telemarketing calls. We note, for example, that the Commission did not amend the definition of ''prior express written consent'' in our rules, which is limited to ''advertisements or telemarketing messages'' to encompass exempted informational calls to residential lines. As a result, we agree with the petitioners and commenters that there is no indication that the *TCPA Exemptions Order* intended to change the Commission's longstanding rules and precedent that apply the written consent requirement only to telemarketing calls. As noted above, commenters, including several

consumer organizations, unanimously support this conclusion, and none oppose it. We therefore amend § 64.1200(a)(3) of our rules accordingly to implement this clarification.

6. Effective Date. The effective date of the amended rule contained herein is six months after publication in the **Federal Register**. This timeframe allows the amended rule to take effect on the same date as the rules that were adopted in the *TCPA Exemptions Order.* The Commission published an announcement of the effective date for the rules adopted in the *TCPA Exemptions Order* elsewhere in this issue of the **Federal Register**. In the *TCPA Exemptions Order,* the Commission concluded that a six-month implementation period was warranted to allow callers an opportunity to take measures to comply with the numerical limits and opt-opt requirements on artificial or prerecorded voice calls made to residential lines.

7. Because the amended rule contained herein is interrelated with the rules from the *TCPA Exemptions Order,* we are establishing an effective date of six months after **Federal Register** publication of this rule such that all the amended rules can take effect on the same date. As a result, our **Federal Register** publication will set the same effective date for both the rules from the *TCPA Exemption Order* and for the amended rule contained herein.

B. Numerical Limits for Exempt Calls to Residential Lines

8. We deny petitioners' request to reconsider the Commission's numerical limits on exempt informational calls to residential lines. We note that section 8(a) of the TRACED Act provides that the Commission ''(I) shall ensure that any exemption under subparagraph (B) or (C) contains requirements with respect to— . . . (iii) the number of such calls that a calling party may make to a particular called party.'' In response to the Commission's request on the matter, commenters generally opposed any limits on exempt calls, but did not submit any specific cost or benefit data on potential call limits or numerical limits that the Commission had imposed in other contexts, and offered little guidance on appropriate limits for different types of calls to meet the TRACED Act's requirements.

9. As the *TCPA Exemptions Order* emphasized, limiting the number of exempted calls to residential lines will greatly reduce interruptions from intrusive and unwanted calls and reduce the burden on residential telephone users to manage such calls. As Congress noted in enacting the TCPA, artificial and prerecorded voice calls are often a greater invasion of privacy than live calls because the call recipient cannot interact with the caller. And more recently, in passing the TRACED Act, Congress noted that ''[u]nwanted or illegal robocalls threaten . . . critical communication[s] when frustrated recipients, fearing unwanted or illegal robocalls, are hesitant to answer their phones.''

10. Further, while the adoption of a numerical limit satisfies the requirements of the TRACED Act, it also brings the residential exemptions ''in line with'' exempted calls to wireless numbers, which contain a numerical limitation on the number of calls that can be made. We agree with the Joint Consumer Organizations that the adopted limits on artificial and prerecorded calls to residential lines will have ''particularly profound benefits for consumers.'' As the Joint Consumer Organizations note, the absence of any limits on prerecorded non-telemarketing calls to residential lines is a primary source of consumer frustration that has led to consumers abandoning their landline telephone service.

11. We continue to believe that—with respect to the exemptions for non-commercial calls, commercial calls that do not constitute telemarketing, and calls by tax-exempt nonprofit organizations—limiting the number of calls that can be made to a particular residential line to three artificial or prerecorded voice calls within any consecutive thirty-day period strikes the appropriate balance between these callers reaching consumers with valuable information and reducing the number of unexpected and unwanted calls consumers currently receive and thus restoring trust in the residential landline network and advancing health and the safety of life, as discussed further below.

12. We also believe a consistent limit for those three exemptions is appropriate. We therefore disagree with ACA International et al. (ACA) that we should impose different numerical limits for each type of informational call based on the content or purpose of the message. While petitioners characterize this as a ''one-size fits all'' approach, we find that such a consistent numerical limit for these three exemptions will benefit both callers and consumers.

13. In addition, contrary to ACA's assertion, there is ample support in the record for the adopted three-calls-per-thirty-day numerical limit. As discussed above, numerous consumer organizations supported this limit, arguing that the three-call-per-thirty-day limit is reasonable. We agree with the Joint Consumer Organizations who argue that, in the context of our federal debt collection rules adopted in 2016, ''the Commission engaged in an extensive and thorough analysis of the appropriate number of unconsented-to calls that should be permitted,'' and that ''[a]fter a full proceeding in which interested parties were invited to provide comments and reply comments, the Commission adopted a limit of three calls per thirty days for these calls.'' Nothing in the current record disturbs that analysis and thus gives us cause to change any of the numerical limits. We also note that the numerical limit for Health Insurance Portability and Accountability Act of 1996 (HIPAA)-related calls to residential lines is identical to the limit that has been in place for more than six years and functioned without any record evidence of unduly restricting the ability of callers to make autodialed or prerecorded voice calls under a similar exemption for wireless telephone numbers. The Commission thus has six years of experience of applying that numerical limit to this same category of calls to wireless numbers, and this experience has demonstrated that this numerical limit strikes an appropriate balance between these callers reaching consumers with valuable healthcare information and restoring trust in the residential landline network, which can help to advance health and the safety of life as discussed further below.

14. Further, we agree with the Joint Consumer Organizations that the three-calls-per-thirty-day numerical limit is also reasonable in light of the two exceptions that the TCPA already provides for artificial or prerecorded voice calls: all calls relating to emergencies are permitted, and all calls for which prior express consent has been provided are permitted. The limitations the Commission adopted in the *TCPA Exemptions Order* are narrowly tailored to advance the health, safety, and privacy of consumers, while still providing opportunities for callers to contact consumers in an emergency or when they have received prior express consent. If callers need to make the calls because of a health or safety emergency or pursuant to prior express consent, there is no limit on the calls. Thus, we disagree with ACA's position that we did not consider the needs of utilities to make emergency calls, as permitted in the rules and Commission precedent.

15. Moreover, as the Commission emphasized in the *TCPA Exemptions Order,* callers wishing to make more than three non-telemarketing calls using

an artificial or prerecorded voice within any consecutive thirty-day period can obtain consumer consent to make more. Callers can use exempted calls to obtain consent if the calls satisfy other applicable conditions. And most significantly, as discussed above, now that we have made clear that callers can obtain consent orally from consumers, informational callers will more easily be able to obtain permission to exceed the numerical limits. We continue to believe that consumers who welcome such calls are likely to readily give such consent, and the record developed on reconsideration does not contradict this assertion. In addition, because the TCPA only restricts calls to a residential telephone number when they use an artificial or prerecorded voice, callers using a live agent to make such calls should not risk violating the TCPA rules.

16. While ACA and several commenters oppose the three-calls-per-thirty-day limit and argue such limit is arbitrary and will impede the ability of informational callers to deliver time-sensitive information to consumers, they neither offer a clear alternative limit to apply to all exempted callers nor suggest appropriate distinct limits for each and every various type of call. In addition, the petitioners offer no new facts or data on the calls they make that have changed since the last opportunity to present such matters to the Commission. ''In the absence of additional data from commenters,'' and to implement the statutory mandate, we conclude that these numerical limits adequately balance the privacy interests of consumers with the ability of informational callers to communicate with the public, and that there is no reason to revisit these limits at this time.

17. Given that we find the numerical limits to be reasonable, we decline to adopt what ACA describes as ''important safeguards'' to ensure that consumers receive the calls they expect. ACA argues that, if the Commission retains the existing numerical limits, it should apply them on a ''per event'' or ''per account'' basis rather than on a ''per telephone number'' basis. We believe a per-event or per-account condition is unnecessary in order for callers to deliver important information to consumers. We emphasize that informational callers need only obtain consent orally or in writing from a consumer to be able to make unlimited calls to that telephone number regarding any event—whether it be a utility service upgrade, a security threat on a financial account, or a scheduled medical appointment. Thus, callers can obtain consent from consumers who desire to receive more than three calls per thirty days; consent is an important safeguard to ensure not only that callers can make the calls they need to make, but that consumers are protected from repetitive nuisance calls. Moreover, ACA's argument in its reply comments for a ''per event'' or ''per account'' approach to call limits is new, but we see no reason why it could not have been presented during the rulemaking proceeding. In the absence of any clear reason that it is in the public interest to adopt ACA's alternative approach to numerical limits, we find this to be an alternative and independent reason not to grant ACA's late request.

18. Finally, we decline ACA's request for the Commission to revisit the numerical limit under the wireless exemption for package delivery notifications that has been in place since 2014. As the Commission stated in the *TCPA Exemptions Order,* such request, which was also made in response to the *TRACED Act Notice of Proposed Rulemaking (NPRM),* published at 85 FR 64091 (Oct. 9, 2020), is outside the scope of section 8 of the TRACED Act. In addition, we deny ACA's request to allow package delivery companies to send at least two additional follow-up messages, even when no signature is required. We find no reason to conclude that the existing exemption that allows for one notification (whether by voice call or text message) to notify a consumer about a package delivery is inadequate to address these situations as described in the record. To the extent that additional notifications may prove helpful in these situations, we note that callers may use their one exempted notification to obtain consent from recipients to make additional notifications or use a live caller to contact the recipient.

C. Numerical Limits Are Consistent With the First Amendment as They Help Restore Trust in the Residential Landline Network and Advance Health and Safety of Life

19. We also conclude that it is fully consistent with the First Amendment to retain the call limitation established in the *TCPA Exemptions Order* for the residential line exemption for healthcare calls subject to HIPAA and the distinct call limitation applicable to the residential line exemptions for noncommercial calls; commercial calls that do not include an unsolicited advertisement; and calls from tax exempt nonprofit organizations (collectively, the ''non-HIPAA exemptions''). In its Petition, Enterprise Communications Advocacy Coalition (ECAC) argues that the different numerical limits adopted for the residential line exemption for healthcare calls subject to HIPAA (one call per day up, to three calls per week) and those adopted for the non-HIPAA exemptions (three calls per thirty days) constitute content-based restrictions that fail strict scrutiny and thus violate the First Amendment. NCTA—The internet & Television Association (NCTA) similarly argues that ''the three-call limit [on exempted commercial informational calls] imposes overbroad restrictions on fully protected speech and violates the First Amendment.'' ECAC and NCTA argue that because the distinction in the call limitations for the different residential line exemptions are content-based, that subjects the Commission's regulatory regime to strict First Amendment scrutiny, and that the Commission has not satisfied that standard. For the reasons explained below, we reject the claim that the call limitations violate the First Amendment and therefore deny requests for reconsideration premised on that theory.

20. Particularly in light of the Supreme Court's recent decision in *Barr* v. *Am. Ass'n of Political Consultants* (*AAPC*), we recognize that a court could view the Commission's approach to the residential line exemptions as implicating content-based regulation of speech subject to strict scrutiny. Strict scrutiny requires the ''government [to] prove[] that the[restrictions] are narrowly tailored to serve compelling state interests.'' Evaluating the First Amendment concerns raised on reconsideration, we find that the call limitations for our residential line exemptions satisfy strict First Amendment scrutiny. As discussed below, we conclude that our call limitations are narrowly tailored to advance a distinct governmental interest—that is, restoring trust in the residential landline network and advancing the health and safety of life—and thus satisfy strict First Amendment scrutiny.

21. We conclude that the adopted call limitations for the residential line exemptions are narrowly tailored to advance the compelling governmental interest in health and safety of life. The landline telephone network—and the communication it enables—is an important tool in ensuring residential consumers receive the information they need to advance their own health and safety of life along with that of others. Yet the evidence reveals that the escalating problem of robocalls has undermined consumers' trust and willingness to rely on their landline telephone, leading consumers in many

cases to simply not answer the phone. That communication breakdown can have significant health and safety of life implications for the many consumers who rely on residential landline service.

22. As a statutory matter, when calibrating the residential line exemptions, it is appropriate for the Commission to consider the health and safety of life implications of the use of the telephone network that our exemption rules would facilitate. Although the TCPA includes a special focus on consumer privacy, it nonetheless recognizes the importance of health and safety of life considerations through the statutory exemption from TCPA restrictions for calls made or initiated for emergency purposes. Congress likewise recognized that ''privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.'' Further, the TCPA was enacted as part of the Communications Act, which established the Commission to, among other things, ''promot[e] safety of life . . . through the use of wire and radio communications.''

23. Turning to the specific context at issue here, evidence supports the conclusion that the volume of robocalls landline consumers receive undermines their trust in, and willingness to rely on, the landline telephone network. There is evidence that the number of robocalls has increased dramatically in recent years. The Commission previously has cited ''hundreds of comments from consumers [filed in a rulemaking] stating that they no longer answer their phone when it rings,'' and has concluded that ''[i]t is obvious that the volume of unwanted calls is reducing the value of telephony to anyone who makes or receives calls.'' Commenters state that ''[t]he unremitting nature of unwanted and unstoppable—even if technically legal—calls made to landlines has led to a wavering trust in voice calls.'' Unwanted robocalls, for example, often are either delivered with inaccurate caller identification (caller ID) information or are delivered with caller ID information that is not familiar to a consumer, and thus are highly likely to be viewed by called parties with suspicion. The Joint Consumer Organizations also explain the practical consequences that flow from this state of affairs: ''[p]eople have become so inured to the unwanted calls ringing their lines that they do not pick up—even when the calls are important.'' There also is evidence that consumers' increasing reluctance to answer the phone undermines public health and safety of life that depends on the phone network. Exacerbating this concern is the fact that traditional residential voice service can be particularly important for vulnerable populations, such as the elderly. As the Joint Consumer Organizations observe, ''[t]he Commission's new regulations provide a meaningful way to rebuild the fading trust in the usefulness of landlines by arming recipients with effective tools to stop many of the unconsented-to calls they receive.''

24. Importantly, we find that it is the overall volume of unauthorized robocalls that has led residential landline consumers increasingly to simply decline to answer the phone, even if a given call might, in the abstract, be subjectively desirable to a given consumer. It is reasonable to assume that callers generally, and specifically those callers who argue here to be able to make unlimited numbers of robocalls without consumer consent, have incentives to call repeatedly because the cost of repeated calling is trivial to the caller financially, and there exists only an incremental risk a consumer will not pick up their call. Thus, callers individually have little or no incentive to be concerned about the collective problem of unwanted robocalls undermining trust in the network. As a result, it is appropriate for us to take action to address the larger overall volume of robocalls. We expect that curtailing the number of calls to residential lines that can be made by virtue of FCC exemptions under section 227(b)(2)(B) will substantially reduce the total volume of calls consumers receive without their prior authorization, helping restore consumers' confidence in the calls they do continue to receive.

25. As a general matter, and in the absence of anything other than conclusory assertions to the contrary, we are not persuaded that a less restrictive limitation than three calls per thirty days would be a reasonable choice of call limitation for these residential line exemptions given the compelling governmental interests at stake. Indeed, one could argue that the need to address the volume of unauthorized calls and thereby restore trust in the telephone network could be addressed most effectively by eliminating these exemptions altogether. But we also must weigh First Amendment considerations, and in this proceeding we do not find a basis to restrict these calls further than a limit of three calls per thirty days under the residential line exemption. In particular, against the backdrop of the Commission previously having adopted, after a thorough and reasoned analysis, a three-call-per-thirty day limit for other types of unconsented-to calls, we conclude that, at least on this record, we do not find a sufficient justification for taking a more restrictive approach and either eliminating the exemptions entirely or adopting lower call limitations, given the need for an appropriate fit between the regulatory approach and the relevant governmental interest.

26. Notwithstanding those general findings regarding the call limits for residential line exemptions, we nonetheless find a less restrictive call limitation warranted for the exemption for healthcare calls as defined by HIPAA. The exemption for healthcare calls as defined by HIPAA is unique in that the governmental interest in health and safety of life cuts both ways with respect to such calls. In other words, curtailing unauthorized robocalls as a whole will help restore consumers' trust and willingness to rely on residential landline service, thereby advancing the governmental interest in health and safety of life—but, at the same time, allowing healthcare calls as defined by HIPAA to reach residential consumers is itself also a benefit to the governmental interest in health and safety of life.

27. On balance, the governmental interest in health and safety of life is best advanced in this unique scenario by allowing a higher number of calls under the exemption for healthcare calls as defined by HIPAA. This call limit matches the limit the Commission adopted for calls to wireless numbers in 2015, and the Commission found ''no credible evidence it has unduly restricted healthcare providers' ability to communicate with their patients.'' We thus conclude that the risk that a more restrictive call limitation could unduly restrict healthcare providers' ability to communicate with their patients—a possibility the Commission cannot rule out on this record—counsels against a lower call limitation. At the same time, in light of our experience with the prior limit for calls to wireless numbers, we also do not find a basis to conclude that a higher number of calls is warranted here, given the mixed effects of such calls when considered in conjunction with all the other calls made without prior consent under the residential line exemptions.

28. We also are not persuaded by commenters' objections to the Commission's call limitations for the residential call exemptions. Some commenters contend that other calls implicate health and safety of life just like health care messages as defined by HIPAA. These commenters appear

concerned that the Commission's approach unduly restricts that speech by failing to apply the more generous call limitations that apply to healthcare calls as defined by HIPAA. But these claims do not account for the full range of calls that can be made notwithstanding the TCPA's restriction on calls to residential lines. In particular, in addition to the Commission-created exemption for health care calls as defined by HIPAA, section 227(b)(1)(B) expressly carves out any call made with ''the prior express consent of the called party,'' and any ''call [] initiated for emergency purposes'' from the scope of its prohibitions.

29. As discussed above, the TCPA's restrictions for calls to residential lines do not apply to calls unless they use an artificial or prerecorded voice. If callers need to make calls related to, for example, power outages or utility work, they can either obtain the consumer's consent to do so before using an artificial or prerecorded voice or use a live caller to make the call. Or, if the call is made for an ''emergency purpose'' as defined by the Commission's rules and orders, it is exempted by our rules. None of the examples in the record articulate a scenario for which distinct, more lenient call limitations practically could be crafted, that would apply to circumstances that both: (i) implicate the governmental interest in health and safety of life and (ii) is not already subject to either the FCC's exemption for health care messages as defined by HIPAA or one of the statutory exceptions. Indiscriminately expanding call limitations based on speculation that they conceivably might benefit such calls would also allow an array of other calls that undermine our goal of restoring greater consumer trust and confidence in the landline telephone network, to the benefit of health and safety of life. Consequently, the record does not reveal a plausible alternative approach to expanding the universe of calls subject to a higher call limitation under the theory that they are similarly situated to healthcare calls as defined by HIPAA.

30. Nor does the record identify a plausible alternative approach that would give more lenient call limitations for calls that commenters claim are delivered for important interests other than the interest in health and safety of life. ACA, for example, alludes to an example of political speech and cites examples of communications bearing on consumers' financial interests or safety of property. More generally, NCTA cites TCPA legislative history that ''Congress did not intend the statute 'to be a barrier to the normal, expected, or desired communications between businesses and consumers.''' These commenters largely do not contend, let alone provide persuasive evidence, that the other interests—such as commercial or financial interests or safety of property—are as compelling as the governmental interest in health and safety of life that we are seeking to advance, which would be undermined by allowing more calls to residential landline consumers without their prior consent. And in all cases, it is essential to keep the aggregate effects in mind—the higher volume of these other types of calls raised by commenters will contribute to the overall lack of trust in the telephone network—a fact undiminished if they at the same time advance some more narrow interest. Furthermore, the First Amendment only requires us to consider plausible alternatives, and the record here does not reveal alternatives that could target just that speech that advances the other identified interests without sweeping in other types of speech that would simply contribute to the call volume that undermines trust in the telephone network without any adequate countervailing benefit.

31. We also are not persuaded that our call limitations for the residential call exemptions are unnecessary in light of anti-illegal robocall measures as a result of the TRACED Act and prior Commission policies—namely: opt-out rights specified by rule; the required implementation of STIR/SHAKEN; and call blocking. As discussed below, we conclude that those other measures—while designed to address important aspects of the robocalls problem—do not obviate the need for our approach to call limitations.

32. Opt-Out. The consumer opt-out rights in our rules, while helpful for consumers, alone are not adequate to protect consumers who have lost trust in the telephone network and consequently are reluctant to answer the phone in the first place. If consumers do not answer a given call and learn who the caller is (assuming that the caller provides accurate information), they have no ability to opt out of future calls from that caller. Thus, despite the important protections they afford, opt-out mechanisms are unlikely to meaningfully reduce the volume of calls received by those consumers who already have lost trust in the telephone network.

33. STIR/SHAKEN. While voice service provider implementation of STIR/SHAKEN will combat robocalls and introduce additional trust into the network, it addresses a different problem than the rules at issue here. STIR/SHAKEN combats the problem of illegal spoofing—that is, the falsification of caller ID information by bad actors to deceive call recipients into believing a call is trustworthy. It accomplishes this goal by allowing terminating providers to verify that the caller ID information attached to a call is legitimate. By adding new information about the call originator and caller ID information displayed, widespread implementation of STIR/SHAKEN promotes call blocking and labeling, enables more effective enforcement, and restores trust in caller ID information.

34. STIR/SHAKEN combats scam spoofed calls, which is a subset of unwanted calls. All forms of unwanted robocalls undercut Americans' trust in the voice network in their own way. An estimate from YouMail found that scam robocalls were just 47% of all robocalls in 2019. The remainder totals an estimated 31 billion robocalls—comparable to the number of *all robocalls* in 2016. Other estimates also indicate that a large proportion of robocalls are not scams. Merely reducing the number of scam calls—while highly valuable as a form of consumer protection and significant progress relative to the *status quo* in terms a reduction to the volume of robocalls—is not sufficient in itself to restore trust that an incoming call is likely to be one the recipient wants to answer. Even if STIR/SHAKEN implementation—and the associated call blocking and consumer response—succeeds at eliminating *all* scam robocalls, a significant number of unwanted robocalls would remain. This, in turn, would continue to undermine trust in the telephone network unless it can be further addressed by the Commission in its calibration of residential line exemptions.

35. Call Blocking. In significant part, the call blocking analysis follows our analysis of STIR/SHAKEN. Even though call blocking measures need not focus solely on scam or illegal robocalls, measures currently in place for landline customers frequently are focused in that manner. To the extent that call blocking targets scam calls, that step—while important and beneficial—does not fully address the problem with lost confidence in the telephone network for the same reasons discussed above with respect to STIR/SHAKEN.

36. Although call blocking tools also can, in part, address legal but unwanted calls, the record here does not support a finding that such measures have the prevalence and degree of success needed to obviate the need for call limitations (or to enable the relaxation

of call limitations) for the residential line exemptions. For one, the record does not demonstrate how successful blocking tools are today at blocking unwanted calls. For another, the Commission has acknowledged and emphasized on numerous occasions in its call blocking orders that any single solution will not be sufficient to address the full problem of unwanted robocalls, and that we therefore need to approach it from multiple angles. Thus, even accepting that some tools seek to block calls beyond scam or illegal calls, we are not confident yet that they would curtail such calls to an appreciable degree. This concern about the tools' design is exacerbated by the limited extent of the public's use of them today. Tools blocking unwanted calls (as distinct from scam or illegal calls) do not appear to be widely in use by consumers today, even if available (and even if available at no cost). In a number of cases, they appear to be offered on an opt-in basis and/or otherwise require affirmative steps by the consumer to set it up. Thus, although they are important tools even today, and have promise to become even more important over time, there is not sufficiently widespread use of tools that block unwanted calls that are not scam or illegal calls to adequately address the circumstances that have led to a loss of trust in the telephone network and associated risks to health and safety of life. Because these tools, however successful they may prove to be, will take substantial time to be deployed on a widescale basis by both internet Protocol (IP) and non-IP based providers, we do not find them to serve as an adequate remedy for the immediate scourge of illegal and unwanted robocalls that will continue to serve as a deterrent to residential telephone use today and in the immediate future. Thus, while blocking tools are incredibly valuable, additional steps to reduce the number of potentially unwanted calls overall: (1) reduce the risk that consumers will be disrupted by a high volume of such calls; and (2) reduce the risk that calls made under the TCPA exemptions will be blocked that, individually, may be wanted, but are not wanted at such high volumes. We will continue to monitor the success of blocking tools and reevaluate our numerical limits in light of our experience with these tools.

37. In sum, we conclude that our call limitations for the residential line exemptions are narrowly tailored to advance the compelling government interest in health and safety of life because they help restore residential landline consumers' trust and willingness to rely on the residential landline telephone network. Further, we do not find that other regulatory alternatives adequately meet this need. Indeed, not only do opt-out, STIR/SHAKEN, and call blocking each have a discrete sphere of likely impact, but even taken in the aggregate they do not address all aspects of the problem. This is sufficient to satisfy strict First Amendment scrutiny.

D. Opt-Out Requirements for Exempt Calls to Residential Lines

38. We deny ACA's request to reconsider the Commission's decision to extend to informational calls opt-out requirements that had previously applied only to telemarketing calls. These requirements mandate use of automated opt-out mechanisms, as well as opt-out lists and policies. Under the new rules, a consumer who wants to avoid further artificial or prerecorded informational calls can ''opt out'' by dialing a telephone number (required to be provided in the artificial or prerecorded voice message) to register his or her do-not-call request in response to that call. Our rules also require that the caller provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request. To effectuate an opt-out mechanism, callers must comply with the requirements of § 64.1200(d) of our rules, which governs the process for handling do-not-call requests. ACA argues that such requirements would be burdensome and that the former rules requiring informational callers to provide only caller identification and a telephone number at the beginning of prerecorded and artificial voice calls are sufficient to protect consumers. ACA further maintains that the Commission did not provide ''any reasoned explanation, cost-benefit analysis, or assessment of the impact on the informational calls that might no longer be able to reach consumers.''

39. As the Commission explained in the *TCPA Exemptions Order,* an opt-out mechanism gives consumers more say in how many calls they receive. We believe consumers should be able to decide which types of calls they want to receive on their residential lines and which they wish to avoid. We agree with the Joint Consumer Organizations that requiring callers making exempt calls to provide an automated opt-out mechanism will significantly empower telephone call recipients to stop unwanted calls. In addition, eliminating opt-out requirements for prerecorded calls to residential lines, as the ACA Petition requests, would remove an additional tool that consumers can use to limit the number of artificial or prerecorded voice calls that they receive—a tool that is consistent with Congress's direction in the TRACED Act of placing limits on the number of calls made pursuant to exemptions—and would lead to more unwanted calls. While commenters argue that applying the same opt-out requirements that apply to telemarketers is a departure from longstanding precedent, they offer no persuasive reasons for why consumers should not be afforded the same tools to avoid unwanted informational calls as they have to combat unwanted telemarketing calls, particularly given the unrelenting number of unwanted robocalls consumers face today. NCTA argues that businesses ''have every incentive to communicate efficiently with and respect the privacy of their customers, as any failure to do so could result in reputational harm and a loss of business.'' And yet the evidence shows that consumers continue to be deluged with unwanted robocalls to their landlines.

40. Informational callers have a variety of alternative methods they may use to reach consumers, including the use of live operators on any calls they make. Our opt-out requirement prohibits only the use of an artificial or prerecorded voice message on future calls to the call recipient. It does not preclude further communication by any other means. To the extent that consumers consider such calls beneficial, they have the ability not to exercise the option to opt out from receiving them and even to consent to receiving unlimited calls from a particular caller. We thus disagree with ACA's assertion that the Commission did not fully consider the cost-benefit impact of precluding informational calls after a consumer opts out of such calls. To the contrary, the Commission recognized that requiring an opt-out mechanism for informational calls will provide a significant benefit—it will ''empower consumers to stop unwanted calls made pursuant to an exemption under section 227(b)(2)(B)'' and ''give consumers more say in how many calls they receive''—and it also considered the burden that adopting an automated, interactive opt-out mechanism will impose on callers who make prerecorded message calls. In doing so, however, the Commission noted that ''the technology that enables opt out is commonplace and easily accessible.'' Nevertheless, ''we recognize that this requirement will impose some additional burden,'' and to alleviate that

burden, we allowed for a six-month implementation period before the opt-out requirements took effect. We took that action to ''ensure that affected calling parties can implement necessary changes in a cost-effective way that makes sense for their individual business models.'' Thus, we reject ACA's argument that we failed to consider the costs and benefits associated with the new rule.

41. Furthermore, we continue to disagree with commenters who argue that opt-out requirements for exempt callers are overly burdensome. The Commission placed a similar condition on exemptions for calls to wireless numbers, and there is no evidence that callers have not been able to comply with such requirements in that context. The technology that enables opt-out mechanisms is commonplace and easily accessible; the Commission's rules have required telemarketers to use the available tools and equipment since 2012.

E. Declaratory Ruling

42. We grant ACA's request to confirm that an earlier Commission ruling on ''prior express consent'' for calls made by utility companies to wireless phone numbers applies equally to residential numbers. As discussed herein, we apply the guidance and compliance standards set forth in the *Edison Electric Institute (EEI) Declaratory Ruling,* FCC 16–88, released on August 4, 2016, which addressed utility calls to wireless telephone numbers, to calls made to residential lines. Specifically, we confirm that consumers who provide their wireless *or* residential telephone number to a company involved in the provision of their utility service when they initially sign up to receive utility service, subsequently supply the wireless or residential telephone number, or later update their contact information with their wireless or residential telephone number, have given prior express consent to be contacted by that company at that number with messages that are closely related to the utility service so long as the consumer has not provided instructions to the contrary.

43. In addition, at the request of several Texas utility companies, and consistent with the Commission's treatment of prior express consent in other contexts, we take this opportunity also to confirm that the provision of a telephone number to the subscriber's utility service provider reasonably evidences prior express consent by the subscriber to be contacted at that number by an upstream electric utility that: (1) provides electricity service to the subscriber's retail electricity provider, to whom the telephone number is given by the subscriber; or (2) is an affiliate of another utility company that provides some other type of utility service to the subscriber, to whom the telephone number is given by the subscriber. In some instances, the upstream electric utility provider may be best positioned to provide subscribers with more timely information regarding issues that may be affecting their service. This ensures that utility service providers involved in the provision of utility service to a subscriber but do not have a direct customer relationship with the subscriber can rely upon consent given to a retail utility provider to communicate with an affected subscriber on matters closely related to the utility service, such as situations in which the provision of electricity service is, or is scheduled to be, impacted due to issues related to the upstream utilities' generation or transmission of electricity.

44. Consistent with the Commission's precedent, we confirm that calls closely related to utility services include those that warn about planned or unplanned service outages; provide updates about service outages or service restoration; ask for confirmation of service restoration or information about lack of service; provide notification of meter work, tree trimming, or other field work that directly affects the customer's utility service; notify consumers they may be eligible for subsidized or low-cost services due to certain qualifiers such as, for example, age, low income or disability; or provide information about potential brown-outs due to heavy energy usage.

45. With regard to calls regarding payment for current utility service, we also incorporate the Commission's prior ruling. Specifically, in the absence of facts supporting a contrary finding, prior to the termination of a customer's utility service, a customer who provided a residential telephone number when he or she initially signed up to receive utility service, subsequently supplied the residential telephone number, or later updated his or her contact information with a residential telephone number, is deemed to have given prior express consent to be contacted by their utility company with messages that are closely related to the service, as described above, as well as calls to warn about the likelihood that failure to make payment will result in service curtailment. After a customer's utility service has been terminated, however, routine debt collection calls by utilities to those customers will continue to be governed by existing rules and requirements, and we leave undisturbed the existing legal and regulatory framework for those calls.

46. We agree with the petitioner and commenters who support this request that these types of informational communications from utility providers are critical to providing safe, efficient, and reliable service. In fact, the Commission has long recognized that ''[s]ervice outages and interruptions in the supply of water, gas or electricity could in many instances pose significant risks to public health and safety, and the use of prerecorded message calls could speed the dissemination of information regarding service interruptions or other potentially hazardous conditions to the public.'' There are a wide range of potential risks to public health and safety presented by the interruption of utility services, and the use of artificial or prerecorded voice message calls can be critically important in speeding dissemination of time-sensitive information to the public. We also note that no commenter opposes this request.

47. To ensure that utility companies call only those consumers who have consented to receive artificial or prerecorded voice calls and that such calls are closely related to the provision of service, we reiterate that the utility company is responsible for demonstrating that the consumer provided prior express consent, as it is in the best position to keep records in the usual course of business showing such consent, and the utility company will bear the burden of showing it obtained the necessary prior express consent. We also note that consumers have the right to revoke consent to such calls if they no longer wish to receive them, just as they can when these calls are made to wireless numbers. As a result, we believe this ruling balances important public safety communications with consumer privacy interests.

Ordering Clauses

48. *It is ordered*, pursuant to the authority contained in sections 1–4, 227, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 227, 405, and §§ 1.2 and 1.429 of the Commission's rules, 47 CFR 1.2, 1.429, that the Order on Reconsideration and Declaratory Ruling *is adopted*.

49. *It is further ordered* that the Declaratory Ruling of the Order on Reconsideration and Declaratory Ruling *shall be effective* upon release. *It is further ordered* that rule amendments adopted in the Order on Reconsideration and Declaratory Ruling *shall be effective* six months after

publication in the **Federal Register**, which shall be preceded by OMB approval of the modified information collection requirements adopted herein.

50. *It is further ordered* that, pursuant to 47 CFR 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of any aspect of the Order on Reconsideration and Declaratory Ruling will commence on the date that a summary of the Order on Reconsideration and Declaratory Ruling is published in the **Federal Register**.

51. *It is further ordered* that the *TCPA Exemptions Order* adopted in CG Docket No. 02–278 on December 29, 2020, *is affirmed in part* and *reversed in part* to the extent indicated herein.

52. *It is further ordered* that the Petitions for Reconsideration filed by the ACA International et al. and Enterprise Communications Advocacy Coalition in CG Docket No. 02–278 on March 29, 2021, and March 17, 2021, respectively, *are granted in part* and *denied in part* to the extent indicated herein.

Supplemental Final Regulatory Flexibility Analysis

53. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Traced Act NPRM,* CG Docket No. 02–278, Notice of Proposed Rulemaking, published at 85 FR 64091, October 9, 2020. The Commission sought written public comment on the proposals in the *Traced Act NPRM,* including comment on the IRFA. The Commission subsequently incorporated a Final Regulatory Flexibility Analysis (FRFA) in the *TCPA Exemptions Order.* This Supplemental FRFA conforms to the RFA and adopts by reference the FRFA in the *TCPA Exemptions Order.* It reflects changes to the Commission's rules arising from the Order on Reconsideration prepared in response to the Petitions for Reconsideration filed by ACA International et al. (ACA) and Enterprise Communications Advocacy Coalition (ECAC).

A. Need for, and Objectives of, the Order on Reconsideration

54. The Order on Reconsideration is part of the Commission's ongoing work to combat unwanted robocalls while permitting legitimate callers to deliver information consumers have consented to receive. Specifically, the Order on Reconsideration grants petitioners' request to clarify and amend the rules so that callers may obtain consent either orally or in writing to exceed the numerical limits on artificial or prerecorded voice calls to residential telephone lines made under the exemptions contained in § 64.1200(a)(3)(ii) through (v) of the Commission's rules. The Commission agrees with the petitioners and commenters, including both industry and consumer organizations, that the Commission did not intend to require that such callers obtain consent only in writing. While the text of the *TCPA Exemptions Order* did not specify that consent must obtained in writing, the Commission agrees with petitioners that the amended rule implementing the numerical limitations inadvertently appeared to require prior express written consent to exceed those limitations. As a result, the Commission now amends § 64.1200(a)(3) of its rules to make clear that consent for informational, non-telemarketing calls to residential telephone lines can be obtained orally or in writing, consistent with longstanding Commission precedent.

55. The Order on Reconsideration denies petitioners' request to reconsider the Commission's numerical limits on exempt non-telemarketing calls to residential lines. The Commission affirms that limiting the number of exempted calls to residential lines will greatly reduce the interruptions from unwanted calls and reduce the burden on residential telephone users to manage such calls. The Commission continues to believe that limiting the number of calls that can be made to a particular residential line to three artificial or prerecorded voice calls within any consecutive thirty-day period strikes the appropriate balance between these callers reaching consumers with valuable information and reducing the number of unexpected and unwanted calls consumers currently receive. In addition, the limit of three calls per thirty-day period is ''in line with'' the conditions for exempted calls to wireless numbers.

56. The Order on Reconsideration also denies petitioners' request to reconsider the Commission's decision to extend to informational calls opt-out requirements that had previously applied only to telemarketing calls. These requirements mandate use of automated opt-out mechanisms, as well as opt-out lists and policies. Under the new rules, a consumer who wants to avoid further artificial or prerecorded informational calls can ''opt out'' by dialing a telephone number (required to be provided in the artificial or prerecorded voice message) to register his or her do-not-call request in response to that call. The rules also require that the caller provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request. The Commission affirms that an opt-out mechanism gives consumers more say in how many calls they receive and that consumers should be able to decide which types of calls they want to receive on their residential lines and which they wish to avoid.

57. Finally, the Order on Reconsideration grants the request of ACA to confirm that the Commission's ruling on ''prior express consent'' for calls made by utility companies to wireless phones applies equally to residential landlines. The Commission confirms that consumers who provide their residential telephone number to a utility company when they initially sign up to receive utility service, subsequently supply the residential telephone number, or later update their contact information with their residential telephone number, have given prior express consent to be contacted by their utility company at that number with messages that are closely related to the utility service so long as the consumer has not provided ''instructions to the contrary.'' The Order on Reconsideration concludes that there are a wide range of potential risks to public health and safety presented by the interruption of utility services, and the use of prerecorded voice message calls can be critically important in speeding dissemination of time sensitive information to the public.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and FRFA

58. In the *Traced Act NPRM,* the Commission solicited comments on how to minimize the economic impact of the new rules on small businesses. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA. In the *TCPA Exemptions Order,* however, the Commission described three comments that focused on the challenges certain entities might face in complying with the opt-out requirements, given their small staffs and limited resources. The FRFA addressed those concerns. The ACA Petition and ECAC Petition addressed in the Order on Reconsideration, and in associated comments, did not raise any concerns with the FRFA.

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

59. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the

Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the rules as a result of those comments. The Chief Counsel did not file any comments in response to the rules adopted in this proceeding.

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

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

61. As noted above, the Commission incorporated a FRFA into the *TCPA Exemptions Order.* In that analysis, the Commission described in detail the various small business entities that may be affected by the final rules, including telemarketing bureaus and other contact centers. The Order on Reconsideration amends the final rules adopted in the *TCPA Exemptions Order* affecting entities that make calls to residential lines pursuant to an exemption in the Commission's rules. The Supplemental FRFA accompanying the Order on Reconsideration adopts by reference the description and estimate of the number of small entities from the IRFA in the *Traced Act NPRM* and FRFA in the *TCPA Exemptions Order.*

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

62. In Section E of the FRFA in the *TCPA Exemptions Order,* the Commission described in detail the projected reporting, recordkeeping, and other compliance requirements for small entities arising from the rules adopted in the *TCPA Exemptions Order.* This Supplemental FRFA adopts by reference the requirements described in Section E of the FRFA. In the Order on Reconsideration, however, the Commission modifies rules adopted in the *TCPA Exemptions Order* to make clear that callers may obtain consent either orally or in writing to exceed the numerical limits on artificial or prerecorded voice calls to residential telephone lines made under the exemptions contained in § 64.1200(a)(3)(ii) through (v) of the Commission's rules. This action should significantly reduce any compliance requirements for small entities. As the Commission emphasized in the *TCPA Exemptions Order,* callers can use exempted calls to obtain consent if the calls satisfy other applicable conditions. Such consent may be obtained verbally on the call. The Commission stated that consumers who welcome the calls would be likely to give such consent. Because the TCPA only restricts calls initiated with an artificial or prerecorded voice to a residential telephone, callers can use a live agent to make such calls without running afoul of the TCPA.

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

63. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

64. The Commission considered feedback in response to the ACA Petition and ECAC Petition in crafting the Order on Reconsideration. We evaluated the comments with the goal of removing regulatory roadblocks and giving industry the flexibility to continue to make calls pursuant to any exemption previously carved out by the Commission, while still protecting the interests of consumers who do not want to receive unlimited calls from such entities and allowing consumers to opt out of future calls from such entities. For example, in the *TCPA Exemptions Order,* the Commission retained all existing exemptions for calls to residential numbers, concluding that such exemptions satisfy the TRACED Act's requirements regarding the classes of parties that may make such calls and the classes of parties that may be called. In the Order on Reconsideration, the Commission takes further action to give industry even more flexibility to make calls to consumers by amending § 64.1200(a)(3) of the rules to make clear that consent for informational, non-telemarketing calls to residential telephone lines can be obtained orally or in writing, consistent with longstanding Commission precedent. This should significantly minimize any compliance costs and burdens on small entities that are subject to the TCPA rules.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Section 64.1200 is amended by revising paragraph (a)(3) introductory text to read as follows:

§ 64.1200 Delivery restrictions.

(a) * * *

(3) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message that includes or introduces an advertisement or constitutes telemarketing without the prior express written consent of the called party, or that exceeds the applicable numerical limitation on calls identified in paragraphs (a)(3)(ii) through (v) of this section without the prior express consent of the called party. A telephone call to any residential line using an artificial or prerecorded voice to deliver a message requires no consent if the call:

* * * * *

[FR Doc. 2023–00635 Filed 1–19–23; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 88, No. 13
Friday, January 20, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0019; Project Identifier MCAI–2022–01155–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–202, –203, –223, and –243 airplanes; Model A330–200 Freighter series airplanes; Model A330–300 series airplanes; Model A340–200 series airplanes; and Model A340–300 series airplanes. This proposed AD was prompted by a report that damage was found to the firewall and fuselage skin in the auxiliary power unit (APU) compartment area on Model A330 airplanes. This proposed AD would require replacing affected tee ducts with serviceable parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 6, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0019; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2023–0019.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0019; Project Identifier MCAI–2022–01155–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0175, dated August 23, 2022 (EASA AD 2022–0175) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, A330–343, A340–211, A340–212, A340–213, A340–311, A340–312 and A340–313 airplanes.

This proposed AD was prompted by a report that damage was found to the firewall and fuselage skin in the APU compartment area on Model A330 airplanes. Subsequent investigation determined that cracks started because of high cycle fatigue in the tee duct,

which led to a hot air leak. Due to the design similarity, this condition could also exist or develop on Model A340 airplanes. The FAA is proposing this AD to address cracks in the tee duct. This condition, if not corrected, could lead to a hot air leak from the tee duct and damage to the APU compartment firewall, possibly jeopardizing its capability to contain a fire.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0019.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0175 specifies procedures for replacement of affected tee ducts (Part Number (PN) 3884654–4 or PN 3884654–5) with serviceable parts (PN 3884654–6). EASA AD 2022–0175 also prohibits the installation of affected parts. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0175 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0175 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0175 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0175 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0175. Service information required by EASA AD 2022–0175 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0019 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 123 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$35,931	$36,271	$4,461,333

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2023–0019; Project Identifier MCAI–2022–01155–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 6, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes specified in paragraphs (c)(1) through (5) of this AD, certificated in any category.

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

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

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

(4) Model A340–211, –212, and –213 airplanes.

(5) Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 49, Airborne Auxiliary Power.

(e) Unsafe Condition

This AD was prompted by a report that damage was found to the firewall and fuselage skin in the auxiliary power unit (APU) compartment area on Model A330 airplanes. Subsequent investigation determined that cracks started because of high cycle fatigue in the tee duct, which led to a hot air leak. The FAA is issuing this AD to address cracks in the tee duct. This condition, if not corrected, could lead to a hot air leak from the tee duct and damage to the APU compartment firewall, possibly jeopardizing its capability to contain a fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0175, dated August 23, 2022 (EASA AD 2022–0175).

(h) Exceptions to EASA AD 2022–0175

(1) Where EASA AD 2022–0175 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0175 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 Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0175, dated August 23, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0175, 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 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 January 13, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–00955 Filed 1–19–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 23–14; RM–11943; DA 23–23; FR ID 122971]

Television Broadcasting Services Roanoke, Virginia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Blue Ridge Public Television (Petitioner), the licensee of WBRA–TV, channel 3, Roanoke, Virginia. The Petitioner requests the substitution of channel 13 in place of channel 3 at Roanoke in the Table of Allotments.

DATES: Comments must be filed on or before February 21, 2023 and reply comments on or before March 6, 2023.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Brad Deutsch, Esq., Foster Garvey PC, 1000 Potomac Street NW, Suite 200, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647, *Joyce.Bernstein@fcc.gov;* or Emily Harrison, Media Bureau, at (202) 418–1665, *Emily.Harrison@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support, the Petitioner states that the proposed channel substitution serves the public interest because it will improve viewers' access to the Station's PBS and other public television programming by improving reception and resolving low-VHF reception issues. The Petitioner further states that the Commission has recognized that VHF channels have certain propagation characteristics which may cause reception issues for some viewers, as well as the existence of environmental noise blockages affecting VHF signal strength and reception, which may vary widely by service area. According to the Petitioner, WBRA–TV's proposed move from channel 3 to channel 13 is predicted to create an area where 64,309 persons are predicted to lose service

without considering the service from other PBS stations. However, when taking into account service from other PBS stations, only 94 persons are predicted to lose PBS service, a number which the Petitioner asserts the Commission has found to be *de minimis.*

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 23–14; RM–11943; DA 23–23, adopted January 10, 2023, and released January 11, 2023. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer and 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.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 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 in paragraph (j), amend the Table of TV Allotments under Virginia by revising the entry for Roanoke to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) *Table of TV Allotments.*

Community	Channel No.
* * * * *	
Virginia	
* * * * *	
Roanoke	*13, 27, 30, 34, 36
* * * * *	

[FR Doc. 2023–01002 Filed 1–19–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[GN Docket No. 22–69; FCC 22–98; FR ID 122588]

Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) seeks comment on potential rules to address digital discrimination of access to broadband internet access service. The document proposes to adopt a definition of ''digital discrimination of access'' as that term is used in section 60506 of the Infrastructure Investment and Jobs Act and seeks comment on further details of the definition, including its scope and the appropriate legal standard. The document proposes to revise the Commission's informal consumer complaint process to accept complaints of digital discrimination of access, and it proposes to adopt model policies and best practices for states and localities combating digital discrimination. The document also seeks comment on other rules the Commission should adopt to facilitate equal access and combat digital discrimination, and the legal authority for adopted rules.

DATES: Comments are due on or before February 21, 2023, and reply comments are due on or before March 21, 2023.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). Interested parties may file comments or reply comments, identified by GN Docket No. 22–69 and FCC 22–98 by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, 35 FCC Rcd 2788 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

FOR FURTHER INFORMATION CONTACT: For further information, please contact either Aurélie Mathieu, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at *Aurelie.Mathieu@fcc.gov* or at (202) 418–2194.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in GN Docket No. 22–69 and FCC 22–98, adopted on December 21, 2022, and released on December 22, 2022 The full

text of this document is available for public inspection at the following internet address: *https://www.fcc.gov/document/fcc-takes-next-steps-combat-digital-discrimination-0.* To request materials in accessible formats for people with disabilities (*e.g.* braille, large print, electronic files, audio format, etc.), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), or (202) 418–0432 (TTY).

Synopsis

I. Introduction

1. In this proposed rule we take the next step in our efforts to promote equal access to broadband for all people of the United States by seeking comment on potential rules to address digital discrimination of access to broadband internet access service. Equal access to high-quality, affordable broadband internet service is critical for everyone living in the Nation, as we increasingly rely on broadband for work and education, healthcare and entertainment, and to stay connected with friends and family. As the broadband networks we depend on have become the backbone to many aspects of civic and commercial life, everyone needs access to robust, high-speed internet.

2. In this proceeding, we seek to identify and address the harms experienced by historically excluded and marginalized communities; provide a grounding for meaningful policy reforms and systems improvements; and establish a framework for collaborative action to promote and facilitate digital opportunity for everyone. These goals follow express congressional direction in section 60506 of the Infrastructure Investment and Jobs Act (Infrastructure Act) to ''ensure that all people of the United States benefit from equal access to broadband,'' including by preventing and identifying steps to eliminate ''digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin.'' In March of this year, we launched a broad inquiry on how to construe the language in section 60506. In response, we received input from a broad array of stakeholders. We now seek further, focused comment on the statutory language and the proposals suggested in the record, as we create a framework for addressing digital discrimination.

II. Background

3. On November 15, 2021, President Biden signed the Infrastructure Act into law. Among other provisions regarding broadband infrastructure, section 60506 of that Act set forth various requirements for the prevention and elimination of digital discrimination. Defining ''equal access'' as ''the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions,'' section 60506 requires the Commission to adopt rules not later than two years after enactment ''to facilitate equal access to broadband internet access service.'' (The Infrastructure Act defines ''broadband internet access service'' for section 60506 and the remainder of Title V as having ''the meaning given the term in section 8.1(b) of [the Commission's rules], or any successor regulation.'' In this proposed rule, we use the terms ''broadband'' and ''broadband internet access service'' interchangeably.) In satisfying that obligation, section 60506 requires us to consider ''the issues of technical and economic feasibility presented by that objective'' and directs our rules be aimed at ''(1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion or national origin; and (2) identifying necessary steps for the Commission[] to take to eliminate discrimination described in paragraph (1).'' Section 60506 further directs the Commission to collaborate with the Attorney General to ensure that ''Federal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination''; to develop ''model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination''; and to revise our ''public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination.''

4. *Pre-Existing Commission Authority To Address Discrimination and Promote Access.* Section 60506 follows other authority granted to the Commission to address discrimination. Section 1 of the Communications Act of 1934, as amended (the Communications Act), codifies as one of the core purposes of the Commission ''to make available, so far as possible,'' a ''rapid, efficient, Nation-wide'' wire and radio communication service with adequate facilities ''to all of the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'' The Communications Act also includes authority in section 202(a) to prohibit unjust or unreasonable discrimination by common carriers in charges, practices, classifications, or regulations in connection with like communications services. The Universal Service provisions of section 254 promote access to telecommunications and information services for ''[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas.'' Section 706 requires the Commission to conduct regular inquiries as to whether ''advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.'' As part of the Commission's authority to grant applications for licenses through a competitive bidding process, section 309(j) requires the Commission to design a bidding process that will, among other things, ''promot[e] economic opportunity and competition'' by ensuring licenses are disseminated ''among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' Under section 541, local franchise authorities are required to ''assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area.'' And to implement section 257, the Commission adopted a ban on discrimination ''on the basis of race, color, religion, national origin or sex,'' in broadcast transactions.

5. *Commission Efforts To Bridge the Digital Divide.* Our work to implement section 60506 complements and builds upon a robust history of Commission efforts to bridge the digital divide. The Commission has long used its Universal Service programs to promote access to telecommunications services and advanced information services at just and reasonable rates for all. These programs help deliver broadband services to low-income consumers and to unserved and underserved communities in rural and insular areas, and provide support in various ways: one offers low-income consumers discounts on voice service or broadband internet access service; others provide funding to eligible schools and libraries for affordable broadband services to help connect students and members of local communities or provide funding for health care providers to ensure that patients have access to broadband enabled healthcare services; and, because some areas may lack network infrastructure, one program offers subsidies to providers to build out and

deploy broadband networks. Since 2020, the Commission also has received congressional appropriations to establish the Emergency Broadband Benefit (EEB) Program and its successor, the Affordable Connectivity Program (ACP), which provides monthly discounts for broadband services and connected devices for qualifying households; and the Emergency Connectivity Fund (ECF) and COVID–19 Telehealth Programs, which have, respectively, provided funding to eligible schools and libraries for broadband services and connected devices for use by students, school staff, or library patrons and health care providers for telecommunications services, information services and connected devices. The Emergency Broadband Benefit and Affordable Connectivity Programs alone have helped provide affordable broadband to more than 15 million qualifying households.

6. We have also explored and taken action on issues that may uniquely impact broadband service in underserved communities. In March 2021, the Public Safety and Homeland Security Bureau refreshed the record in a proceeding regarding network resiliency during disasters, including in communities with vulnerable populations. In February of this year, we adopted rules addressing certain practices in apartments, public housing, office buildings, and other multi-tenant buildings that limit competition for broadband service in those buildings. And in March of this year, the FCC released its Strategic Plan which reflects goals to help bring affordable, reliable, high-speed broadband to 100 percent of the country and to gain a deeper understanding of how our rules, policies, and programs may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

7. *Communications Equity and Diversity Council.* On June 29, 2021, the Commission chartered the Communications Equity and Diversity Council (CEDC). (In chartering the CEDC, the Commission renewed the charter of the Advisory Committee on Diversity and Digital Empowerment under a new name.) The mission of the CEDC is to present recommendations to the Commission on ''advancing equity in the provision of and access to digital communication services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability.'' The Commission has appointed distinguished leaders from community, industry and governmental organizations as members of the CEDC and its three working groups: the Digital Empowerment and Inclusion Working Group, tasked with ''making recommendations for addressing digital redlining and other barriers that impact equitable access to emerging technology in under-served and under-connected communities''; the Innovation and Access Working Group, tasked with ''recommending solutions to reduce entry barriers and encourage ownership and management of media, digital, communications services and next-generation technology properties, and start-ups to encourage viewpoint diversity by a broad range of voices''; and the Diversity and Equity Working Group, tasked with ''examining how the FCC can affirmatively advance equity, civil rights, racial justice, and equal opportunity in the telecommunications industry to address inequalities in workplace employment policies and programs.''

8. The CEDC and its working groups have taken significant steps toward executing their charges over the past 17 months. The CEDC has held five public meetings, including one on September 22, 2022, when the Innovation and Access Working Group hosted a Digital Skills Gap Symposium & Town Hall to examine the issues and challenges that states and localities face in addressing the need for greater digital skills training. And on November 7, 2022, the CEDC adopted a report titled ''Recommendations and Best Practices to Prevent Digital Discrimination and Promote Digital Equity,'' including a portion developed by the Digital Empowerment and Inclusion Working Group recommending both (1) model policies and best practices to prevent digital discrimination by broadband providers, and (2) best practices to advance digital equity for states and localities.

9. *Task Force to Prevent Digital Discrimination.* On February 8, 2022, Chairwoman Rosenworcel announced the formation of the cross-agency Task Force to Prevent Digital Discrimination. The Task Force is focused ''on creating rules and policies to combat digital discrimination and to promote equal access to broadband across the country, regardless of zip code, income level, ethnicity, race, religion, or national origin.'' Since its inception, the Task Force has facilitated coordination among the Bureaus and Offices regarding this proceeding, advised the Commission on matters regarding combating digital discrimination, and met with interested stakeholders. In November of this year, Task Force leadership held listening sessions with a broad array of advocates to hear diverse perspectives on this proceeding.

10. *Notice of Inquiry.* In March 2022, we released a *Notice of Inquiry* commencing this proceeding and seeking broad comment on the statutory language and rules we should adopt consistent with congressional direction. In response, we received substantial comment on these issues from a range of stakeholders representing interests from the civil rights community, state and local governments, and broadband service providers of various sizes, technologies, and business models. The record reflects diverse perspectives on the nature and causes of digital discrimination of access, how to construe section 60506 and the authority it offers us, and the steps we should take to fulfill the Infrastructure Act's direction.

III. Discussion

11. In light of this record, we now seek further, focused comment on the rules we should adopt to fulfill the congressional direction in section 60506 to facilitate equal access to broadband internet access service and prevent digital discrimination of access. We first propose and seek comment on possible definitions of ''digital discrimination of access'' as used in the Infrastructure Act. We next propose to revise our informal consumer complaint process to accept complaints of digital discrimination. We seek comment on the rule or rules we should adopt to prevent digital discrimination of access, as required by Congress. And we propose to adopt model policies and best practices for states and localities combating digital discrimination based on the CEDC recommendations. (For purposes of this proposed rule, the term ''localities'' includes Tribal governments.)

A. Defining ''Digital Discrimination of Access''

12. We propose to adopt a definition of ''digital discrimination of access'' that encompasses actions or omissions by a provider that differentially impact consumers' access to broadband internet access service, and where the actions or omissions are not justified on grounds of technical and/or economic infeasibility. We seek comment on whether this definitional approach should depend on whether, and for what reason(s), the provider intended to discriminate on the basis of a protected characteristic. We therefore propose to define ''digital discrimination of access,'' for purposes of this proceeding, as one or a combination of the following: (1) ''policies or practices, not

justified by genuine issues of technical or economic feasibility, that differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin''; and/or (2) ''policies or practices, not justified by genuine issues of technical or economic feasibility, that are intended to differentially impact consumers' access to broadband internet access service based on their income level, race, ethnicity, color, religion, or national origin.'' (We further explore the nuances and possible meaning of the components our proposed definitions in Part III.A.2 of this proposed rule.) We believe that this approach represents a plausible interpretation of ''digital discrimination of access'' as the term is used in the Infrastructure Act. We seek comment on this proposal, and we seek further comment on the details of this definition.

13. We seek comment on whether this definitional approach represents the best way to interpret digital discrimination of access under the statute. Should the definition focus on the provider's actions or omissions as represented by its policies and practices, or should we adopt another approach? Should the definition exclude those actions or omissions that are justified by issues of technical and economic feasibility? Is there another definitional approach that would be more practical or implementable? Does our proposed approach align with the concept of digital discrimination in section 60506 and allow us to fulfill the goals of that section? Would a different definition for ''digital discrimination of access,'' including suggestions in the record, better interpret digital discrimination under the statute? Does the statutory use of the statutorily-defined term ''equal access'' separate from the statutorily-undefined term ''digital discrimination of access'' counsel any particular approach? We propose to define the term ''digital discrimination of access'' to give meaning to the full term used in subsection 60506(b)(1), and we seek comment on this proposal. Is that the appropriate term in section 60506 to define, or should we instead define a different term, such as ''digital discrimination''? What significance, if any, do the words ''of access'' hold? Should we draw on Commission precedent to give meaning to the full term ''digital discrimination of access'' or its components, such as the use of ''discrimination'' in section 202(a) of the Communications Act? If so, how should we do so? Rather than incorporate technical and economic feasibility into our definition in the manner we have proposed, should we instead understand section 60506 to require providers to ''take whatever affirmative steps [are] necessary to make equal access economically and technologically feasible?'' Should we consider any of the definitions of ''digital discrimination'' that the CEDC's Digital Empowerment and Inclusion Working Group compiled in its report on model policies and best practices for states and localities from interviews they conducted? If so, how should we include that content in the definition?

1. Disparate Impact and Disparate Treatment

14. We seek comment on whether to adopt the definition of digital discrimination based on disparate impact (*i.e.,* discriminatory effect), disparate treatment (*i.e.,* discriminatory intent), or both. In response to the *Notice of Inquiry,* we received comments in support of each approach, including arguments that the language of section 60506 encourages or requires us to adopt one approach or the other. We now seek further comment on which approach (or combination of approaches) we should take and the legal support for each approach. Commenters in support of a disparate impact standard put forth a number of arguments to explain their view. For example, some commenters including the American Foundation for the Blind, Black Women's Roundtable, the Multicultural Media, Telecom and Internet Council, and Public Knowledge, urge the Commission to define digital discrimination as being based on disparate impact and argue that this is the only way to create an effective prohibition that captures discrimination as it happens in the real world. In addition, commenters such as the National Digital Inclusion Alliance, the National Urban League, and representatives of several cities and counties across the country emphasize that facially neutral or even unintentional practices could still produce discriminatory effects and ''the devastating consequences are much the same'' as intentional discrimination. Several commenters further argue that the language of section 60506 supports a disparate impact approach.

15. Commenters favoring a definition requiring disparate treatment also offer a variety of arguments to support their view. Some commenters, such as ACA Connects, International Center for Law & Economics, AT&T, and the Wireless Internet Service Providers Association (WISPA), argue that even broadband deployment driven by legitimate business reasons might lead to uneven deployment, and that digital discrimination of access should not be understood to include such conduct. AT&T and the U.S. Chamber of Commerce further assert that a rule defining digital discrimination based on disparate impact alone would chill broadband investment and harm competition. CTIA-The Wireless Association (CTIA) maintains that an intent standard is most consistent with Congress's and the Commission's overall efforts to improve broadband access and affordability and the many challenges involved in broadband deployment. Some commenters also argue that the language of section 60506 does not support a definition of digital discrimination that includes disparate impact.

16. We seek further comment on this record and whether and how to incorporate disparate impact or disparate treatment in our definition, either independently or in some combined formulation, to best achieve the goal established by Congress in section 60506 to ''facilitate equal access.'' Are some commenters' assertions correct that the problem of digital discrimination is primarily one of disparate impact such that our efforts to ''facilitate equal access'' would fall far short if we focus solely on disparate treatment? Alternatively, would a definition centered on disparate impact chill investment and deployment? If so, why, and what is the likely scope of any disinvestment effect that considering disparate impact might cause, and would the harms of disinvestment (if any) outweigh the benefits of adopting such an approach, including but not limited to potentially greater access to broadband services? Would our consideration of disparate impact present practical challenges for entities subject to any rules we adopt or to victims of digital discrimination? Additionally, would considering disparate impact present practical administrative challenges for the Commission, or would it be simpler to administer because the Commission would only need to analyze the effect of the particular action and its business justification, rather than trying to discern intent? If there are administrative or compliance burdens associated with a disparate impact approach, how might the Commission minimize those burdens to best achieve the statutory goal of facilitating equal access? Under a disparate treatment approach, by contrast, how difficult would it be to discern a broadband

provider's intent for particular service and deployment decisions? Are there circumstances in which an intentionally discriminatory policy or practice does not produce discriminatory effects? Should the Commission address such a practice in order to satisfy its mandate to ''prevent[ ]'' digital discrimination, regardless of its effects?

17. Certain commenters also offer arguments in favor of each approach based on the statutory text of section 60506 and U.S. Supreme Court precedent. Some commenters argue that Supreme Court precedent in the *Inclusive Communities* decision, which concluded that the Fair Housing Act encompasses claims based on disparate impact, requires us to adopt a disparate treatment approach to implement section 60506, while others argue that the same precedent requires us to adopt a disparate impact approach. Some commenters further point to statutory language and context, separate from this precedent, as reasons for us to adopt each approach.

18. We first seek comment on whether the *Inclusive Communities* decision applies to our actions in this proceeding. As an initial matter, is this decision the controlling precedent under which we should consider this issue? Is there other judicial precedent we should consider, instead of or in addition to this decision, to guide our interpretation of section 60506? Are section 60506's design and operative language sufficiently similar to the Fair Housing Act and the other civil rights statutes discussed in *Inclusive Communities* to make the Supreme Court's textual analysis in that decision applicable to section 60506? Assuming that *Inclusive Communities* is binding or even helpful precedent for our task, we seek comment on the standard we should derive from the decision and apply to our analysis of section 60506. In the course of concluding that disparate impact claims are cognizable under the Fair Housing Act, the Supreme Court stated that antidiscrimination laws should be interpreted to encompass disparate impact claims when (1) the statutory text refers ''to the consequences of actions and not just to the mindset of actors,'' and (2) ''that interpretation is consistent with statutory purpose.'' Should we follow this two-pronged analysis? In its comments, Verizon frames its argument according to three ''textual through-lines'' it divines from the *Inclusive Communities* decision: (i) Congress's use of the language ''otherwise adversely affect'' or ''otherwise make unavailable''; (ii) the placement of these types of ''catchall phrases looking to consequences'' at the end of lengthy sentences that ''begin with prohibitions on disparate treatment''; and (iii) the placement of this language in the operative text of the statute. Should we understand this proposed framework to be a part of, or to supersede, the two-pronged test identified by the Supreme Court? Is the framing Verizon suggests unduly restrictive given the text of section 60506 and Congress's overarching goal of ensuring ubiquitous access to broadband services across the United States?

19. We also seek comment on the view shared by Lawyers' Committee for Civil Rights Under Law and the Multicultural Media, Telecom and internet Council that the *Inclusive Communities* standard encourages us to read section 60506 as primarily addressing disparate impacts. These commenters first argue that section 60506 is focused on the consequences of actions and not the mindset of actors. They identify subsection 60506(a)—which states that it is the policy of the United States to ensure that all people ''benefit from equal access to broadband''—as operating to shift the statute's focus to the consequences of actions rather than the intent of actors in the same way that the Supreme Court interpreted the term ''otherwise'' in the context of the Fair Housing Act. Furthering this argument, the Multicultural Media, Telecom and internet Council asserts that the definition of ''equal access'' in subsection 60506(a)(2) is focused on the impact of provider practices on a subscriber's ''equal opportunity to subscribe,'' not on provider intent. The Lawyers' Committee for Civil Rights Under Law argues that subsection 60506(b)(2)—which directs the Commission to identify necessary steps to ''eliminate discrimination'' based on the statute's listed categories —similarly refers to consequences, and that subsection 60506(c)(3), in allowing the Commission to prohibit discrimination based on ''other factors [it] determines to be relevant'' contains the kind of ''consequence-oriented catchall[ ]'' that the Supreme Court has found instructive in determining the appropriateness of a disparate impact approach. In this regard, it also argues that interpreting section 60506 to encompass disparate impact claims is consistent with the statutory purpose, satisfying the second prong of the *Inclusive Communities* inquiry, because the language of subsection 60506(a) evinces Congress's ''clear intent to create a world where all Americans can maintain equal access to broadband.'' We seek comment on these arguments and whether they should persuade us to adopt a definition of digital discrimination based on (or including) disparate impact.

20. We next seek comment on the view of Verizon, AT&T, and USTelecom, which all argue that *Inclusive Communities* should limit our definition of digital discrimination to include only intentionally discriminatory acts. Verizon argues that section 60506 lacks the key word ''otherwise,'' which the Supreme Court has noted signals a shift in the statutory language away from an actor's intent to the consequences of the actor's actions. Verizon, contrary to the Lawyers' Committee for Civil Rights Under Law's argument, contends that the statute lacks the sort of ''catchall'' phrase the Court has previously used to identify statutes that allow for disparate impact claims or any ''effects-based language.'' Instead, Verizon interprets Congress's direction in subsection 60506(b)(1) as focused on the ''motive'' of the acting entity, not on whether the action results in disparate impact. AT&T and USTelecom similarly argue that section 60506 lacks the phrases that the Court has previously found to support claims under a disparate impact analysis, and also assert that section 60506's use of the phrase ''based on'' when formulating the prohibition ''requires a showing of purposeful discrimination rather than incidental effects.'' And as a structural matter, AT&T asserts that subsection 60506(a) is only aspirational and the fact that subsections 60506(b) and (c) do not specifically refer to equal access ''within any given provider's service area,'' implies that Congress did not intend to apply a disparate impact standard. We seek comment on these arguments and whether they should persuade us to adopt a definition of digital discrimination based solely on disparate treatment.

21. We seek comment on various additional interpretative questions. Under Supreme Court precedent, a ''business necessity'' generally constitutes a defense to a discrimination claim that is based solely on disparate impact. In directing the Commission to take into account ''issues of technical and economic feasibility'' when adopting our rules, did Congress effectively build a business justification defense into section 60506? If so, would this indicate that Congress intended for section 60506 to encompass claims of digital discrimination based on disparate impact? For commenters arguing that the statute only permits liability for intentional digital

discrimination, how would the Commission account for technical and economic feasibility in that circumstance? Should we understand Congress to have intended to allow providers to justify intentional discrimination on the basis of technical and economic feasibility? Are there other examples commenters can provide of a statute only providing a business justification defense to a claim of intentional discrimination?

22. Some commenters argue that the Commission should adopt rules that encompass disparate impact claims because the statute does not specify that intent is a required element of digital discrimination, and Congress has included such language in recent telecommunications related consumer protection laws, thus indicating that Congress intended to not require discriminatory intent. We seek comment on these views. We also seek comment on whether broadband providers are already subject to laws and regulations prohibiting intentional discrimination. And if so, do such laws extend to the full scope of digital discrimination contemplated by section 60506? For example, do they apply only to cable franchises, and only to discrimination based on income? Do they apply only to common carriers with respect to common carrier services? Are there state or local laws that address digital discrimination that we should note? If broadband providers are already subject to laws of general applicability preventing intentional discrimination, does that suggest section 60506 includes instances of disparate impact? Or are there intentionally discriminatory practices our rules could capture that are not already prohibited by other laws and regulations? We seek comment on these differing perspectives.

23. We also seek comment on AT&T's structural argument that under a disparate impact approach, section 60506 would be on a ''collision course'' with the other broadband provisions of the Infrastructure Act. AT&T warns that broadband deployment efforts funded through other provisions in the Infrastructure Act ''might skew [a provider's] deployment ratios for households inside and outside of protected classes,'' and thus increase that provider's risk of liability under a rule that includes a disparate impact standard. Do others agree with this assertion that there is a tension between a disparate impact approach and the Infrastructure Act's deployment objectives? If so, how could we structure our rules to mitigate these concerns? Would a prohibition focused solely on discriminatory intent fit within the Infrastructure Act's other broadband-related provisions better than a rule that includes disparate impact liability? ACA Connects argues that, in contrast to statutes like the Civil Rights Act of 1964, the Fair Housing Act, and the Equal Credit Act, there is no record of a history of discriminatory conduct in the telecommunications industry that could justify adoption of a disparate impact rule. We seek comment on this reasoning. Is it accurate that those entities currently providing broadband services (or their predecessors) have no record of a history of discriminatory action? Would such a record be necessary to adopt rules to prohibit digital discrimination based on disparate impact liability?

24. We seek comment on whether the inclusion of income level as a listed characteristic should guide our understanding of whether the statute applies to claims of discrimination based on disparate impact or disparate treatment. CTIA contends that the inclusion of income level as a listed characteristic is unique compared to Federal civil rights statutes and its ''novelty'' supports a rule based solely on discriminatory intent. According to CTIA, an approach to antidiscrimination laws and claims of discrimination based on income level under a disparate impact analysis would conflict with subsection 60506(b)'s direction that our rules account for economic feasibility. In contrast, Public Knowledge rejects the characterization that prohibiting discrimination based on income level is novel, and Communications Workers of America, Common Cause et al., and the Leadership Conference on Civil and Human Rights all point to the inclusion of income level as an indication that Congress intended section 60506 to cover a wide range of practices, including those giving rise to disparate impact claims. We seek further comment on this divided record. Is the inclusion of income level as a listed characteristic in an antidiscrimination statute novel on a Federal and state level? If so, does that counsel in favor of adopting a definition based solely on disparate treatment, one based solely on disparate impact, or one based on some combination of the two? Furthermore, how does a consumer's income level, or the average income level of a geographical area, relate to economic feasibility in the deployment and provision of broadband internet access services?

2. Other Components of the Definition

25. We next seek comment on other components of our proposed definitions. We seek comment to drive our understanding of what services, entities, and practices should be within the scope of our definition; how and on what bases we should understand policies and practices to be justified by technical and economic considerations; who can be subject to digital discrimination; and how we should determine when digital discrimination has occurred. We seek comment on each issue in turn.

26. *Covered Services.* We first seek comment on the scope of services that individuals use when they experience digital discrimination of access. We seek to answer the following question: what services are consumers using if and when they encounter ''policies or practices . . . that differentially impact [their] access to broadband internet access service''? Commenters to the *Notice of Inquiry* differ on whether we should extend our definition of ''digital discrimination of access'' to broadband internet service provided over a variety of technologies, both fixed and mobile, other communications services, and services delivered over broadband. These commenters argue that consumers should not be excluded from enjoying certain civil rights protections by virtue of the service they are using, and that some consumers and communities cannot enjoy the benefits broadband has to offer without having non-discriminatory access to services accessed over broadband. By contrast, other commenters argue that services other than broadband are outside the scope of section 60506 and this proceeding. In the proposed definitions of ''digital discrimination of access,'' we propose to limit our focus to broadband internet access service. We seek comment on what technologies our definition should include.

27. We seek comment on the types of technologies over which broadband internet access service is provided and to which our rules should apply. The record reflects that providers can use various forms of technologies to provision broadband to consumers, including digital subscriber line (DSL), cable modem, fiber, fixed and mobile wireless, and satellite. Are these types of technologies correctly understood as the technologies over which broadband internet access service is provided, and are there any other types of technologies we should consider? Does the definition of ''broadband internet access service'' that is provided in § 8.1(b) of the Commission's rules capture the appropriate scope of technologies such that we should follow the approach taken in that rule? Should we consider the upload and download speeds of the types of technologies that providers use

to provision broadband service and, if so, how? Are there any unique considerations associated with different technologies we should take into account and, if so, how should we address them? Does the language of section 60506 in any way require us to include or exclude broadband provided over certain types of technologies?

28. We seek comment on including other services, such as other communications services and services delivered over broadband, into our definition. In order to achieve the policy that ''subscribers should benefit from equal access to broadband internet access service,'' and fulfill our direction to ''facilitate equal access to broadband internet access service,'' is it necessary that we include other services in our definition? How do other services relate to that goal? Or do commenters believe that section 60506's focus on broadband internet access service reflects congressional intent that other services not be included in our definition? Are other services distinct from broadband internet access service in ways that would complicate analysis of the problem of digital discrimination if we include them? And would their inclusion complicate administration of and compliance with any rules we adopt under this definition? If we did include other communications services or services offered over broadband, what specific services should we include? Does section 60506 give us authority to include these types of services in our definition? If not, can we rely on other sources of authority to do so? If we were to address discrimination issues regarding other services under other authority, would it be better to develop dedicated rules for those services? Should we, at minimum, include services we find to provide the functional equivalent of broadband internet access service?

29. *Covered Entities.* We next seek comment on what types of entities should be covered by our definition of digital discrimination of access. We seek to answer the following question: *whose* ''policies or practices . . . that differentially impact consumers' access to broadband internet access service'' should be covered by our definition? In the record developed in response to the *Notice of Inquiry,* some commenters argue that we should extend our definition broadly beyond broadband providers to include entities working on a provider's behalf; those involved in any of the logistical steps to provide broadband, such as local and state governments and those who maintain network infrastructure; and generally to ''any entity that can affect'' an individual's ability to access or afford broadband, such as a business owner or landlord. These commenters note that actions by a variety of entities can differentially impact consumers' access to broadband and thus, to address digital discrimination as directed by Congress, we should include these types of entities within the scope of the rules we adopt. By contrast, the National Multifamily Housing Council and the National Apartment Association assert that the statutory language limits our focus to broadband providers.

30. We seek comment on whether we should understand ''digital discrimination of access'' to include policies or practices by a broader range of entities than broadband providers. Can entities other than broadband providers engage in or contribute to digital discrimination of access? If so, what are those entities and can they all be covered by the rules we ultimately adopt in this proceeding? Are these types of entities different from broadband providers in ways that would complicate analysis of the problem of digital discrimination if we defined it to include them? And would their inclusion complicate administration of and compliance with any rules we adopt? Would covering a broader range of entities allow any rules we adopt to better adapt to changes in the provision of broadband or how digital discrimination occurs? Should we instead understand our definition to include only broadband providers and those working on their behalf? How would we understand when an entity is working on behalf of a broadband provider? To the extent we include agents of broadband providers in our definition, what expectations and obligations should we place on agents who are simply executing at their principal's direction? If we limit our definition to include only broadband providers, would such an approach leave a loophole or be too narrow to allow us to fulfill our direction to ''facilitate equal access to broadband internet access service''? Do we have authority to extend our rules to entities other than broadband providers? Should the analysis of what constitutes digital discrimination of access differ as applied to broadband providers and their related entities on the one hand, and entities unrelated to broadband providers on the other? If we understood covered services to extend beyond broadband service, are there other considerations we should take into account regarding covered entities?

31. *Prohibited Practices and Policies.* We seek comment on how the Commission should understand the policies or practices that can lead to digital discrimination. We seek to answer the following question: *what* ''policies or practices . . . differentially impact consumers' access to broadband internet access service''? In the record developed in response to the *Notice of Inquiry,* some commenters suggest we consider policies and practices related to broadband infrastructure deployment, network upgrades, marketing or advertising, service provision, network maintenance, and customer service; service provider use of algorithms to make decisions about deployment and other aspects of providing internet service; and privacy and security practices. These commenters argue that prohibiting discriminatory practices in these areas is necessary because they can lead to inequitable outcomes for consumers or exacerbate existing biases.

32. We seek comment on what policies and practices should be covered by our definition. Do commenters agree that the practices and policies suggested in response to the *Notice of Inquiry* can differentially impact consumers' access to broadband? What specific practices and policies related to broadband infrastructure deployment, network upgrades, marketing or advertising, service provision, network maintenance, customer service, sales, and ongoing technical support can do so? For example, can practices and policies related to certain terms and conditions of service, such as those concerning speeds, data caps, throttling, late fees, equipment rentals and installation, contract renewal or termination, customer credit or account history, promotional rates, or price, constitute or lead to digital discrimination? Are there practices and policies related to how broadband internet access service is sold or how technical support is provided that can lead to digital discrimination? How can we account for the idea that policies and practices can cause or contribute to digital discrimination in combination, if not individually? Can bias in algorithms lead to digital discrimination? And, what specific device and consumer data protection measures, and privacy and security practices, can differentially impact consumers' access to broadband? Are there other policies and practices that we should specifically consider in the context of understanding how to define digital discrimination of access to best meet our direction to ''facilitate equal access to broadband''?

33. We seek comment on how the language of section 60506 should influence the policies and practices we consider part of digital discrimination. Section 60506 also defines ''equal

access'' with reference to ''comparable speeds, capacities, latency, and other quality of service metrics'' and ''comparable terms and conditions.'' Does this language give us discretion to include any practices that relate to quality of service, including non-technical aspects of service, such as customer service, marketing or advertising, or terms and conditions related to contract renewal, account history, or price? Or, does the preceding reference to ''speeds, capacities[, and] latency'' reflect Congress's intent for the Commission to consider only policies and practices related to technical aspects of quality of service? What types of policies and practices should fall within the statutory phrase ''terms and conditions''? Does that phrase include pricing? What are the limitations, if any, on our ability to include policies and practices that impact technical aspects of existing service, and the decision to deploy service in the first instance?

34. *Technical and Economic Feasibility.* We seek comment on how our definition should ''tak[e] into account'' justifications on the basis of technical and economic feasibility. In the language of our proposed definitions: *in what circumstances* is a differential impact to consumers' access to broadband ''justified by genuine issues of technical or economic feasibility''? In the record developed in response to the *Notice of Inquiry,* some commenters argue that providers should have a safe harbor and presumption of nondiscrimination when certain conditions are met or certain circumstances are present. These commenters explain that in these situations a lack of deployment is most likely due to economic or technical factors that make deploying broadband impractical, and that providing a safe harbor in these instances will allow us to more thoroughly investigate more probable instances of digital discrimination. Other commenters argue that we should instead analyze claims of infeasibility on a case-by-case basis. Some of these commenters argue that individualized scrutiny and strict standards are necessary to fulfill Congress's intent as set forth in section 60506, to ensure that meritless assertions of infeasibility do not impede legitimate complaints alleging digital discrimination of access.

35. We seek comment on whether to adopt safe harbors, establish a case-by-case standard for infeasibility, or both. As an initial matter, we seek comment on what the legal significance of any such safe harbor should be, in terms of shifting the burden of proof or otherwise. What would be the practical implications of adopting safe harbors generally or a case-by-case standard? Would a bright line safe harbor approach be more likely to excuse conduct that, on an individualized review, may not be justified? Are there ways we could design the safe harbor or safe harbors to increase the odds that we successfully identify cases of digital discrimination while excluding only non-meritorious claims or charges? Would a case-by-case standard be more effective at identifying justified, and unjustified, conduct? If so, does that increased effectiveness outweigh any administrative and compliance burdens that may accompany an individualized approach? How can we minimize any identified burdens? Would requiring an individualized analysis for each case of alleged infeasibility place an unreasonable burden on providers or create uncertainty that could chill network investment? Would a combination of each approach, setting an individualized analysis accompanied by certain safe harbors, alleviate any identified concerns with each approach individually? Does the language of section 60506 require us to take one approach or the other? Would an individualized approach create uncertainty and potentially chill investment? Or, would a safe harbor approach effectively immunize problematic behavior so as to undermine our ability to facilitate equal access to broadband?

36. We seek comment on the substantive standard we should require under either approach, to best balance congressional direction to ''facilitate equal access'' while ''taking into account the issues of technical and economic feasibility presented by that objective.'' If we were to provide a safe harbor, which circumstances would be appropriate for a safe harbor? Should we provide a safe harbor under limited circumstances, encompassing a limited set of business necessity exemptions? Should we provide a safe harbor under a wider variety of circumstances and, if so, what should those circumstances be? Would a safe harbor be appropriate when a provider acted in reliance on Commission requirements or funding commitments, such as merger conditions, those associated with universal service funding, or build-out? Or would a safe harbor be appropriate when conduct occurs that is outside of a provider's control, such as third-party conduct? If we adopted an individualized analysis instead or in addition, what should be the standard for technical and economic infeasibility? How should we determine that an issue of feasibility is ''genuine,'' and are there standards or concepts in other contexts we should consider to do so? For example, should we look to the summary judgment standard in Federal court, which requires the party requesting relief to ''show[ ] that there is no genuine dispute as to any material fact,'' or the final step of the *McDonnell Douglas* burden-shifting analysis where a complainant can show that a proffered justification for allegedly discriminatory conduct is mere pretext? Should technical infeasibility require a showing that providing service was technically impossible, or some lower bar? Should economic infeasibility require a showing that providing service was unprofitable based on marginal cost, average cost, or some other basis? On what time horizon should we consider profitability or analyze claims of technical or economic infeasibility? Should we establish a bright line ''standard where a profit margin reduction between neighboring areas . . . does not constitute [economic] infeasibility''? Should we adopt different safe harbors, or a different individualized analysis, for different types of providers, or differently-situated providers? Does the language of section 60506 require us to include any particular safe harbors or factors in a standard for individualized analysis, beyond accounting for ''technical and economic feasibility''? What specifically does it require us to include? More generally, how should we construe ''feasibility'' within the meaning of section 60506? Should we understand it to refer to capability, convenience or reasonableness? What would be the practical impact of each such interpretation? Should we draw on prior instances of the Commission interpreting and using language similar to the phrase ''technical and economic feasibility'', and how specifically would we apply those instances in the context of section 60506?

37. *Consumers.* We seek comment on how we should identify those who might experience digital discrimination of access. We seek to answer the following question: *whose* experience of a ''differential[ ] impact [on] . . . access to broadband internet access service,'' whether intended or not, is the focus of Section 60506? In the record developed in response to the *Notice of Inquiry,* one commenter argues that we should consider claims by individuals and communities that meet one of the listed characteristics, because entire communities may experience digital discrimination. Another argues that we

should not include non-subscribers or ''consumers generally.''

38. We seek comment on what consumers should be covered by our definition of digital discrimination of access. Should we understand digital discrimination of access to be a problem experienced by individuals or communities, or both? Is digital discrimination experienced differently at the individual and community levels such that our definition would need to account for that difference? What are the practical or administrative costs and benefits to the Commission, providers, and those who might suffer digital discrimination if both communities and individuals are covered by our definition? Does section 60506 *require* us to include or exclude communities from coverage?

39. Do commenters agree with ACA Connects that we should limit our concept of ''subscribers'' to only current subscribers, and not include non-subscribers or consumers generally? Would excluding non-subscribers imply that those who do not currently subscribe to broadband cannot experience digital discrimination of access? Is such an approach reasonable, or does it exclude those who might experience digital discrimination most acutely? If we adopt such a definition, how would we account for consumers who don't subscribe to broadband because the service is not available in their community, possibly because of digital discrimination? Does the use of the word ''subscribers'' in subsection 60506(a) require that the scope of our digital discrimination rules be tied to subscription status, or does the lack of reference to subscribers and general direction to ''facilitate equal access'' in subsection 60506(b) counsel in favor of covering non-subscribers? What would be the practical impact of limiting coverage to subscribers on the one hand, or extending it to non-subscribers on the other? If we include non-subscribers, are there distinctions between types of non-subscribers that we should consider, such as those who are and are not actively seeking broadband service? What distinctions or subcategories of non-subscribers should we consider and why?

40. *Listed Characteristics.* In our proposed definition, we propose to include the same characteristics as bases for discrimination as those identified in section 60506. We seek comment on how to give meaning to these characteristics and whether we should include any additional characteristics in the rules we ultimately adopt. In response to the *Notice of Inquiry,* commenters suggest interpreting the listed characteristics in accordance with existing ''legislation, regulations, and precedent,'' such as the Civil Rights Act of 1964 and/or the New York City Human Rights Law, because using existing understandings reduces uncertainty. Other commenters argue that the Commission should include additional characteristics such as disability status, age, sex, sexual orientation, gender identity and expression, familial status, domestic violence survivor status, homelessness, and English language proficiency. These commenters argue that the Commission should recognize characteristics of communities that are historically marginalized or underserved because doing so is consistent with Congress's intent in section 60506. By contrast, other commenters assert that the listed characteristics are exclusive, arguing that Congress was deliberate in its choice to specify the listed characteristics.

41. We seek comment on whether we should give further meaning to the characteristics listed in the statute and included in our proposed definition: income level, race, ethnicity, color, religion, and national origin. Is the meaning of some or all of these terms sufficiently established such that we do not need to give them further meaning? Even if their meaning is established, would it promote certainty to adopt further definitions or explanations consistent with other laws or precedent? Or would adopting definitions unnecessarily decide issues we could resolve on a case-by-case basis? If we did adopt further definitions based on existing law or precedent, what resources should we use to give meaning to the listed characteristics? Would the Civil Rights Act of 1964 or the New York City Human Rights Law most effectively define some or all of the listed characteristics? What other legislation, regulations, or precedent should we consider to give meaning to the listed characteristics?

42. We seek comment on whether we should expand our definition to include characteristics beyond those listed in section 60506. (We note that section 60506 directs the Commission to adopt rules to facilitate equal access to broadband internet access service, ''including''—but not limited to—addressing discrimination based on the listed characteristics.) If we did, what additional characteristics would we include? Should we include some or all of disability status, age, sex, sexual orientation, gender identity and expression, familial status, domestic violence survivor status, homelessness, and English language proficiency, as suggested in the record? Should we include those residing in certain geographic areas, such as urban or rural areas, or areas that have experienced historic redlining? If we adopted some additional characteristics, but not all, on what basis should we decide which to include and which to exclude? Are these characteristics distinct from those listed in section 60506, or from one another, in ways that would complicate analysis of the problem of digital discrimination if we defined it to include them? And would their inclusion complicate administration of and compliance with any rules we adopt under this definition? Are the meanings of these various characteristics clear, or would we need to further define them? How would we do so? Might we adopt the meanings used by other Federal agencies such as the Equal Employment Opportunity Commission? If we decline to include additional characteristics, are there nonetheless circumstances in which we could consider the impact based on an unlisted characteristic when analyzing claims of digital discrimination based on a listed characteristic?

43. What would be the statutory basis for including additional characteristics in our definition? The term we propose defining, ''digital discrimination of access,'' in subsection 60506(b)(1) must be ''based on income level, race, ethnicity, color, religion, or national origin.'' Does the Commission have discretion to include additional characteristics for purposes of implementing section 60506, or does the presence of specific listed factors in subsection 60506(b)(1) demonstrate congressional intent to limit our focus to those factors? Could we take action to address inequities faced by those with unlisted characteristics under a different provision of section 60506: the policy statement in subsection 60506(a)(3) that we should ensure ''all people of the United States'' benefit from equal access; the broader direction in subsection 60506(b) to ''facilitate equal access''; or the separate direction in subsection 60506(c) to collaborate with the Attorney General to prohibit deployment discrimination based on ''other factors the Commission determines to be relevant''? Would any such action need to be distinct from action related to this definition of ''digital discrimination of access''? Or should we read these other provisions to reflect Congress's intent for the listed characteristics to evolve as communities or individuals demonstrate they face digital discrimination? Are there other sections of the Communications Act, or

other Federal legislation, that would give us authority to include certain characteristics in our rules preventing digital discrimination of access?

44. *Differential Impact.* We seek comment on the standard or standards we should use to determine when consumers face digital discrimination, relevant comparators, and data we should consider. We seek to answer the following question: *when* is consumers' access to broadband internet access service ''differentially impact[ed]'' by policies or practices, whether intentionally or not? We seek comment on how the Commission should compare services, terms, and conditions to make this determination; the geographic area we should compare across; and data sources we should look to in making this determination. Commenters in response to the *Notice of Inquiry* suggest comparing technical metrics such as speed, capacity, and network outages, as well as non-technical factors such as caliber of customer service. Commenters variously cite geographic boundaries such as municipal lines as well as a covered entity's service area as methods for defining a given area. Commenters also point to different ways that the Commission can use data in these efforts, such as by monitoring the status of fiber deployments in different communities and examining whether there exists a statistical correlation between the characteristics listed in section 60506 in a community and lower levels of access to broadband.

45. As an initial matter, we seek comment on the scope of our inquiry when identifying instances of differential impact. Should we understand ''equal access'' and ''discrimination of access'' to focus on availability of broadband, adoption of broadband, quality of broadband, or some combination of these factors? Are there other factors we should consider? The Electronic Frontier Foundation and other commenters observe that availability of broadband hinges on its deployment and highlights the lack of deployment in underserved areas despite the economic feasibility of doing so. The Multicultural Media, Telecom and internet Council argues that the statute should be viewed from the ''perspective of subscribers,'' which they assert means the Commission should also ''focus on issues related to broadband adoption, not just broadband availability.'' Other commenters agree that we should consider the barriers that affordability and a lack of digital literacy present to adoption of services, even where available. Conversely, the International Center for Law & Economics posits that matters of adoption and affordability have no basis in the statutory language, which it argues focuses only on physical availability. We seek comment on these arguments. When determining whether a consumer's access to broadband has been ''differentially impact[ed],'' should we look to availability of service or should we look to adoption, affordability, and quality of service where service is already available? What would be the practical impact of either interpretation, and would it be appropriate to consider both? Is there a statutory basis for including barriers to adoption in our definition? We also seek comment on how we should consider substitutability of service in determining whether a given area benefits from equal access. For example, does the availability of a comparable service where another service is unavailable mean that a consumer ''benefit[s] from equal access'' in a given area? Should the availability of one service utilizing a different technology, such as 5G wireless service versus traditional wireline service, impact the analysis where the other is otherwise incomparable or unavailable?

46. We seek comment on the standard and methods we should use to identify when a consumer's broadband internet access is differentially impacted with respect to the technical aspects of available service. Should we simply compare network performance metrics, and if so, at what threshold would we determine that performance was meaningfully better or worse for certain consumers? The National Digital Inclusion Alliance argues for establishing a prescriptive range for the quality-of-service metrics that would indicate that a service is ''comparable.'' If we establish prescriptive ranges of acceptable differences in service metrics, how do we ensure those ranges are not overly broad or narrow? Should we adopt different ranges depending on the service or geographic area? Is the number of relevant variables too large for this approach to be easily administered and complied with? How will any methods we adopt comparing technical quality of service need to change across services and technologies? What analytical approach should we take to account for the technical practicalities of provisioning broadband, such as when providers conduct network upgrades, network degradation occurs, or a provider experiences a network outage? Should we temporarily relax these standards when these circumstances occur? Some commenters argue that the Commission should require providers to undergo network performance testing similar to models that they assert have previously been effective. If we adopt periodic assessment requirements, how often would be practical to assess technical performance while accounting for changes that may occur over time, such as network upgrade cycles? How could we minimize the burden of this approach on providers? Should we assess comparability of service quality from the consumer's perspective and provide that service quality and terms and conditions are ''comparable'' if a consumer would not recognize differences in their broadband experience? Should we consider the unique needs of particular communities? What metrics and data sources can we employ in making these comparisons? Should we measure, for example, rates of service interruptions and cut-offs? Does section 60506 counsel that we take any particular approach when assessing comparability and determining whether there is a differential impact? For example, do the terms ''equal access'' or ''discrimination'' include any concept of scope or exclude any requirement of materiality for such differential impact? We also seek comment on whether and how broadband consumer labels might facilitate enforcement of any potential rules we adopt, either from the perspective of informing consumer complaints or Commission enforcement actions.

47. We seek comment on the standard and methods we should use to identify when a consumer's broadband access is differentially impacted with regard to non-technical aspects of available service. How can we determine when, for example, customer service, late fees, equipment rentals and installation policies, access to specific service plan offerings or speeds, contract renewal or termination policies, availability of customer credit or account history practices, and prices are meaningfully better or worse for certain consumers? Should we establish certain known thresholds to promote compliance and make it easier for consumers to know when they have experienced digital discrimination? Or is this inquiry better suited to a case-by-case determination? What standard would we use for any individualized analysis? To the extent we include price in our conception of digital discrimination, how should we consider plans that are identical along all features except for price? How should we consider the practice of price discrimination (*i.e.,* charging different

consumers different prices for the identical service)?

48. We seek comment on the relevant geographic comparators to use in identifying when a consumer's broadband access is differentially impacted. Commenters in response to the *Notice of Inquiry* suggest various methods for defining geographic areas for relevant comparators. The National Digital Inclusion Alliance, for example, proposes that the Commission use a provider's legally defined service area, such as its cable franchise area, within a given metropolitan or micropolitan statistical area. ACA Connects similarly contends that the relevant area should be defined as a provider's service area, and further argues that the Infrastructure Act does not provide us with authority to take a different approach. Conversely, Public Knowledge argues that our definition ''should be broad and flexible'' and that such an approach is consistent with the language of section 60506. Public Knowledge further argues that limiting our inquiry to a provider's service area would render the Commission incapable of addressing instances where services are not offered in the first instance as a result of discriminatory practices. Does the language of section 60506 counsel or require us to understand this geographic area in any particular way? The statement of policy in subsection 60506(a)(1) states ''the policy of the United States'' is that ''subscribers should benefit from equal access to broadband . . . within the service area of a provider of such service.'' Does this language reflect that our focus under section 60506 should be limited to a provider's existing service area? If so, how should a provider's existing service area be defined? Is it in all census blocks that the provider has a current subscriber? Or is it any area that the provider could deploy services to within a certain timeframe, and if so, what is the appropriate timeframe? Should we include areas in a certain proximity to a provider's current service area, and if so, what is the appropriate range? In subsection 60506(b), we are directed to adopt rules to ''facilitate equal access,'' and ''equal access'' is defined with reference to comparable service ''in a given area.'' Does the use of a different term in that definition reflect Congress's intent to understand geographic area differently, and if so, in what way?

49. We seek comment on these methods for understanding the geographic areas we should compare to determine if access to broadband internet has been differentially impacted. Should we compare only current subscribers to other consumers in a provider's service area? If so, are there instances where the Commission should expand or constrict the boundaries of such an area? What circumstances would necessitate or counsel doing so? Would an approach based on a provider's current service area prevent us from addressing instances when an individual or community completely lacks access to service from that provider? If we define the relevant area based on a provider's service area, should that understanding be cabined by the technology employed (such as wired versus wireless broadband) when a covered entity offers different kinds of services? Alternatively, should we adopt a broader understanding of the relevant area for comparison? Should we compare different providers within the same service area? Should we tie the relevant area to municipal boundaries, such as city, county, or state lines? Should we use concepts such as a metropolitan statistical area to capture similar areas that are not bound by municipal boundaries? Should we make comparisons between rural and urban areas, and if so how? Should we work with state, local, and Tribal governments to identify the appropriate comparison area? Should we use different concepts of geographic area in different contexts? Are there any unique considerations we should take into account when examining differential impact on the basis of income level?

50. We seek comment on data sources we can or should use to help us identify instances where consumers' access to broadband internet is differentially impacted. Commenters highlight various studies in responding to the *Notice of Inquiry,* and we seek comment on those cited. These include, among others, investigations into the correlation between median area income and broadband deployment; the sources and effects of digital redlining; availability of fiber and high-speed broadband in lower-income and marginalized communities; and broadband gaps in rural communities. AT&T, for example, cites a study that examines publicly available data from the Commission and the U.S. Census Bureau and asserts that non-white and lower income households are not systemically and disproportionately underserved. Are these assertions well grounded? Do commenters agree with this study's conclusions, and why or why not? Should the Commission utilize U.S. Census Bureau demographic data more generally in identifying instances of digital discrimination of access? Conversely, the Electronic Frontier Foundation and other commenters cite to a survey in California that examines racial and income disparities and the correlation between historical and digital redlining. Should the Commission consider survey data such as the study cited? Is the study offered by these commenters persuasive, and why or why not? Are there studies aside from those cited in the record that the Commission should examine, and why? For example, a study co-published by the Associated Press and The Markup examined services offered by major providers in various cities, where—despite being only blocks apart and being charged the same amount—one community, usually lower income and more racially diverse, received much slower internet service compared to another. We seek comment on the data presented and what accounts for the disparities identified.

51. We also seek comment on how we should leverage our own existing data and whether we should undertake new data collection efforts. What existing data sources could help us to identify when consumers' access to broadband internet has been differentially impacted? For example, should we look to the Broadband Data Collection, the Broadband Data Act mapping process, or other collections? How specifically should we use the data offered by these collections? Should these or other data sources be used individually or in combination with other sources, whether from the Commission or originating externally, and if so, how? How can we best leverage the data collected through our informal consumer complaint process? What steps can the Commission take, including making new data available, to enable individuals and communities to identify digital discrimination of access? Are there ways we can improve existing sources of data, including the Broadband Data Collection and National Broadband Map, so that they can be used in evaluating digital discrimination of access in the future? If we undertake new data collections, what data should we collect? Should we collect data on broadband adoption not captured by other collections; on marketing and advertising practices; on broadband usage and adoption; on technical and non-technical quality of service; pricing and service plan availability; or on other subjects? How should those data collections be designed to maximize their utility for the Commission's efforts to address digital discrimination of access, while minimizing the burden on entities who

must provide these data? If the Commission does collect new data, at what geographic level should this data be collected so that it can adequately address complaints of digital discrimination but not be too burdensome on providers? If the Commission collects new data through surveys, what kind of information should such surveys collect, and from whom? In conducting such surveys, are there other agencies, institutions, or organizations the Commission should consider partnering with?

B. Revising the Commission's Informal Consumer Complaint Process

52. We propose to revise our informal consumer complaint process to accept complaints of digital discrimination of access, as directed in section 60506. In the *Notice of Inquiry,* we explained that the Commission receives complaints through its Consumer Complaint Center and sought comment on how to modify our complaint processes to best execute this direction. In response, commenters suggest a variety of modifications to our consumer complaint process for purposes of accepting digital discrimination complaints. In light of this record, we propose to revise our consumer complaint process to (1) add a dedicated pathway for digital discrimination of access complaints; (2) collect voluntary demographic information from filers who submit digital discrimination of access complaints; and (3) establish a clear pathway for organizations to submit digital discrimination of access complaints. We further propose to make anonymized complaint data available to the public through the FCC's Consumer Complaint Data Center to inform third-party analyses. We seek comment on these proposals, and on any other revisions to our informal complaint rules and process that would be appropriate with respect to complaints regarding digital discrimination of access.

53. We seek comment on our proposal to add a dedicated pathway for digital discrimination of access complaints to our consumer complaint system. Commenters who propose this idea argue we should do so because it will help the Commission identify trends that warrant further action. Do others agree that adding a digital discrimination of access pathway would offer these benefits? Or are digital discrimination complaints better understood as a subset of ''internet'' complaints, for which there is already a category on our Consumer Complaint Center? If we did adopt this proposal—demographic information aside—should we create new or different fields for the digital discrimination of access complaint form from those offered for other types of complaints? If so, what specific changes should we make and what purpose would they serve?

54. We seek comment on our proposal to establish a pathway for organizations representing communities experiencing digital discrimination of access to submit digital discrimination complaints. We propose establishing a complaint pathway for state, local, Tribal, and community-based organizations, which would include separate processes for individual and organizational filers. Commenters who support this proposal argue that it will ensure that organizations can advocate on behalf of disenfranchised and marginalized individuals who are either unserved or underserved as a result of digital discrimination of access; and that it will enable the Commission better to identify and respond to substantive complaints and collaborate with state, local, and Tribal governments. What specific improvements can be made to the current informal consumer complaint process to make it more accessible for submission by organizations on behalf of groups of individuals? In what ways would a digital discrimination of access complaint from a community-based organization be different from an individual consumer's digital discrimination complaint, and how could we account for those differences in our consumer complaint system? Should organizational complainants be expected or required to share statistics and other information regarding the community in question and the services offered, or not offered, so that the Commission could more efficiently evaluate the bases of the complaint? What tools and resources should the Commission provide community-based organizations in order to submit digital discrimination of access complaints on behalf of the individuals they serve? Is the informal complaint process the appropriate entry point for organizational submissions? Would a dedicated collection portal help to differentiate consumer versus organizational submissions and better set clear expectations for the filer? Should we impose associational standing or other requirements on the filing of organizational complaints? If so, what such requirements would be appropriate?

55. We seek comment on our proposal to collect voluntary demographic information from filers who submit digital discrimination of access complaints. Commenters who support this idea argue that we should collect demographic information from individuals filing complaints because doing so will enable us to better identify underlying patterns of discrimination that complainants themselves may be unaware of, and thus increase the efficiency and utility of the informal complaint process. We seek comment on how we should collect demographic information from filers who submit digital discrimination of access complaints. What specific demographic information should we collect? Should we instead make the submission of demographic information mandatory for digital discrimination of access complaints? Would requiring demographic information discourage the filing of complaints, and if it would, would this potential loss of complaints be justified given the potential benefits of collecting this information? If the complaint process requests, but does not demand, demographic information, should complainants be advised that their information will not be readily useable for uncovering the presence of digital discrimination of access? Would doing so give complainants an incentive to provide demographic information? Are there specific privacy concerns we should account for when collecting this demographic information? How would we accommodate organizational complainants in any demographic information requirements we adopt? Given the temptation to make frivolous, malicious or prank complaints, and the ease of machine generation of such complaints, should complainants be required to provide enough information about themselves to enable the commission to verify the existence of the complainant? Does the collection of demographic information have an impact on a filer's willingness to complete the complaint form? If a complaint is misfiled through a different pathway, how should we collect demographic information from that filing?

56. We seek comment on any other changes we should make to our informal consumer complaint process to accept complaints of digital discrimination of access. Commenters variously propose that we make it easier to file a complaint for individuals who do not speak English; develop screening questions to guide consumers toward the appropriate category for their complaint; and improve our processes for submitting a complaint other than through our internet-based Consumer Complaint Center. We seek comment on whether to adopt these suggestions and, if we do, how to best implement them. We seek

comment on whether the Commission should engage in some form of complaint validation. Is it sufficient that providers who may be impacted by such complaints are able to review these complaints and respond?

57. *Making Complaint Data Available to the Public.* We seek comment on our proposal to make digital discrimination complaint data available to the public through the FCC's Consumer Complaint Data Center. The record in this proceeding reflects widespread support for ensuring that the data collected from digital discrimination of access complaints, including demographic information, are made publicly available for third-party review and analysis. Making these data available could promote transparency and empower third parties to identify trends in digital discrimination. We seek comment on how to best make these data publicly available and useful while protecting complainant privacy. Some of the data currently collected from consumer complaints are made publicly available on our website in the Consumer Complaint Data Center. Should we make the same data publicly available for digital discrimination of access complaints? To the extent we receive and make available demographic data unique to digital discrimination complaints, to protect the privacy of complainants, we propose taking steps to aggregate, anonymize, or otherwise de-identify those data. We seek comment on how best to do so while protecting complainant privacy. Would it be useful and effective to buffer, aggregate, or remove some information in the data to protect consumer privacy? Instead, are disaggregated data necessary to be useful? If so, how could we protect the privacy of complainants while still publishing disaggregated data? Should we make additional data available to parties that agree to certain terms regarding confidentiality and use of that data? What additional data would we make available, and on what terms?

C. Adoption of Rules

58. We seek comment on the rules we should adopt to fulfill the congressional direction to address digital discrimination of access. Section 60506 requires us to adopt rules to facilitate equal access to broadband, accounting for ''issues of technical and economic feasibility,'' that include ''preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin,'' and ''identifying necessary steps for the Commission to take to eliminate [digital] discrimination.'' To execute this direction, we seek comment on whether we should adopt a broad prohibition of digital discrimination of access and if so, how to structure and enforce it; place affirmative obligations on broadband providers; and take action in other proceedings that bear on or relate to addressing digital discrimination. In addition, we seek comment on various other proposals received in response to our *Notice of Inquiry.*

1. Broad Prohibition on Digital Discrimination of Access

59. In our *Notice of Inquiry,* we sought comment on whether we should adopt rules that broadly and directly prohibit digital discrimination of access and on what other approaches we should take to implement the statute, such as prohibiting specifically enumerated conduct. Some commenters in response, such as the National Digital Inclusion Alliance, express support for a direct prohibition as a way for the Commission to ''be comprehensive and straightforward in its fulfillment of its Congressional obligation to prevent and eliminate such discrimination.'' Other commenters, such as WISPA, warn that we should be cautious in adopting rules because too broad of a prohibition could ''discourage deployment and investment for service providers, especially small providers,'' while rules that are too narrow ''will not identify actual cases of digital discrimination and will not serve the public interest.'' The National Digital Inclusion Alliance argues that we should identify and enumerate specific prohibited conduct and that such an approach would benefit the industry, subscribers, and the government by making clear what is barred by our rules.

60. We seek comment on whether we should adopt a broad prohibition on digital discrimination of access, and how to structure and enforce such a prohibition. Would adopting a broad prohibition on digital discrimination of access be our best course to effectuate Congress's direction to adopt rules to ''facilitate equal access,'' including ''preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin,'' and ''identifying necessary steps for the Commissions to take to eliminate [digital] discrimination''? Would it present administrative challenges for government or a lack of clarity for providers or consumers? Would that lack of clarity chill investment? How could we address any identified practical challenges? Should we accompany any broad prohibition we adopt with specific, enumerated prohibited practices? If so, would this take the place of a broad prohibition of digital discrimination or be supplementary? If we were to publish a list of prohibited practices considered examples of digital discrimination, what practices should we include? Are the answers to these questions different if we adopt a definition of digital discrimination based on disparate impact or disparate treatment? If we adopt a definition of digital discrimination of access that includes a disparate impact standard, should we nonetheless limit our broad prohibition to instances of disparate treatment? Would a rule prohibiting only intentionally discriminatory policies or practices be effective in achieving the stated goal of subsection 60506(a)? If not, why not? Would such a rule establish a bar too high for claimants (or the Commission) to clear, and would it be easy to evade? Is there any context in which we should adopt a prohibition on disparate impact and not disparate treatment? Or does disparate impact inherently include disparate treatment?

61. We seek comment on how to address claims of digital discrimination of access under any broad prohibitions we might adopt. We first seek comment on the analytical framework we should use for claims of digital discrimination of access under disparate impact and disparate treatment prohibitions. We next seek comment on how to effectuate enforcement of any prohibition we might adopt.

a. Analytical Framework

62. *Disparate Impact Framework.* We seek comment on how we should structure our rules and procedures to implement a prohibition of digital discrimination based on disparate impact. Courts have generally used a three-part test to determine whether a facially neutral policy or practice discriminates against members of protected groups under civil rights statutes. First, the complainant must establish a *prima facie* case of discrimination by proving that the challenged practice or policy causes a disproportionate, adverse impact on a group determined by reference to a protected characteristic. This showing creates an inference of discrimination. Second, the burden shifts to the respondent to establish a substantial, legitimate justification for the challenged practice or policy. This second step is typically referred to as the ''rebuttal'' phase. And third, where the respondent provides a substantial, legitimate justification, the complainant can still prevail on the claim by demonstrating the existence of an

available, alternative practice or policy that would achieve the same legitimate objective but with less discriminatory effect. Public Knowledge suggests that we implement such a burden shifting approach so that once a prima facie showing of discrimination has been made, ''the burden would shift to the alleged violator to demonstrate that digital discrimination has not taken place, either by rebutting the evidence, or by providing a 'substantial legitimate justification' for the unequal access to broadband that the complainant has shown.'' We seek comment on whether to adopt this type of framework. Is this the best way to analyze claims of disparate impact? How burdensome is it, and would another framework be less burdensome? Should we adopt all three of the steps used in Federal court cases involving disparate impact, a selection of them, or different steps? If not, what specific components of a burden-shifting framework should we include?

63. If we adopt a burden-shifting framework similar to that used in Federal court, what specifically should we require at each step of the analysis? What type of evidence or data sources would we look for to substantiate the presence of a policy or practice that disproportionately affects an individual, group, or community that meets one of the listed characteristics? EveryoneOn supports the adoption of rules that, similar to those established under the Fair Housing Act, would prohibit practices based on ''discriminatory effect, even if not motivated by discriminatory intent,'' and suggests that examples of such discriminatory effect could be found in ''the assessment of unduly high fees, service interruptions, unreliable internet service in low-income neighborhoods, and unfair barriers such as credit checks, deposits, etc. when subscribing to or reestablishing service.'' Should we identify these and other types of practices as prima facie evidence of disparate impact when supported by statistical or other reliable evidence of their disproportionate impact on individuals or groups determined by reference to protected characteristics? The Multicultural Media, Telecom and Internet Council suggests that the existence of a statistical disparity connected to a provider's policies or practices would be required to make an initial case of disparate impact. Should we adopt that standard, or a different one? Under a traditional burden-shifting approach, how would a provider show that it had a substantial legitimate justification for its policy or practice? Would proof that the challenged practice or procedure was necessitated by genuine technical and economic feasibility concerns provide the necessary showing to rebut the prima facie case? Are there any substantial business justifications that we should recognize in this context other than genuine technical and economic feasibility concerns? Are there other ways that we might incorporate the consideration of technical and economic feasibility into this step of the traditional, three-step analysis? And what should we require to establish an alternative practice that would achieve the same objective but with less discriminatory effect? Can we look to existing precedent to answer these questions? And do we need to establish these standards at this point, or should we allow them to be refined on a case-by-case basis going forward?

64. *Disparate Treatment Framework.* We seek comment on how we should structure our rules to implement a prohibition of digital discrimination of access based on disparate treatment. In general, courts have used several analytical frameworks to evaluate claims of intentional discrimination. The Connecticut Office of State Broadband & Office of Consumer Counsel suggests that we use a burden shifting system based on the McDonnell Douglas framework. Under the McDonnell Douglas framework, a claim of discrimination proceeds through three steps: (1) the plaintiff proves a prima facie case of discrimination by typically showing that they are a member of a protected group, were eligible for a service or employment opportunity, were denied or otherwise treated in an adverse manner, and that a similarly situated individual who is not a member of the protected group was treated better; (2) the burden then shifts to the defendant to articulate a legitimate, non-discriminatory reason for the challenged practice or action; and (3) if the defendant meets the burden to provide a legitimate, non-discriminatory reason, the burden shifts back to the plaintiff to demonstrate that this reason is pretext for discrimination. We seek comment on whether to adopt this framework to analyze claims of intentional digital discrimination of access. Is this the best way to analyze claims of intentional discrimination? Are there certain situations in which it would work better than others? If so, what situations and why? How burdensome is this analysis, and would other frameworks be less burdensome? If we adopt rules incorporating this framework, would we need to make any changes to accommodate the specific direction of section 60506 and, if so, what changes would be appropriate?

65. If we adopt a burden-shifting framework similar to McDonnell Douglas, what specifically would we require at each step of the analysis? What types of evidence should we consider sufficient to demonstrate discriminatory intent? For example, without access to the internal communications of a broadband provider, how would a subscriber support a claim of intentional digital discrimination? What types of data sources could the Commission or subscribers use to analyze potential claims? How might a Commission data collection fit into this process? In the context of broadband internet access service, how would the Commission evaluate the ''fit'' between the challenged practice and the justifications offered in support of it? Does consideration of technical and economic feasibility fit in this step of the analysis? On what basis might we determine that any proffered reasons are pretextual? Can we look to existing precedent to answer these questions? And do we need to establish these standards at this point, or should we allow them to be refined on a case-by-case basis going forward?

66. We seek more focused comment on how to incorporate section 60506's direction to account for ''technical and economic feasibility'' into any intentional discrimination prohibition we adopt. In the McDonnell Douglas framework, once a prima facie case is made, the burden shifts to the provider to demonstrate that the conduct is not motivated by discrimination but is instead based on legitimate non-discriminatory reasons. Does following that model adequately ''tak[e] into account the issues of technical and economic feasibility''? Or are there instances in the context of broadband service where intentional discrimination is justified by technical and economic feasibility? In particular, we seek comment on how subsection 60506(b)(1)'s inclusion of ''income level'' as a listed characteristic fits into this framework. For example, should a provider be permitted to defend a claim of income-based intentional discrimination by offering projections showing that deploying to a particular community would likely produce a lower-than-normal rate of return on investment? How are we to determine whether a proffered economic justification, such as rate of return, is a pretext for income-based discrimination? Some commenters argue that a smaller-than-normal profit margin should not be a sufficient reason

to claim economic infeasibility and that the Commission should rarely excuse discrimination on such grounds. We seek comment on this view and on the National Digital Inclusion Alliance's suggestion that we establish a process for providers to identify a technical or economic feasibility justification, provide relevant proof, and request a waiver from the obligations we impose under section 60506. Would such a system operate as a standalone waiver process in the context of any rules preventing digital discrimination of access or function only as part of a provider's defense to claims of digital discrimination? Would a standalone process confer benefits that are not already available under the Commission's general waiver authority?

67. *Other Frameworks.* Rather than adopt one of the frameworks elaborated above, should we take a different approach to analyzing claims of digital discrimination of access under a broad prohibition? CTIA argues that a burden shifting process is a ''poor fit here'' because it would be highly burdensome on broadband internet access service providers, and broadband coverage and service varies from location to location. We seek comment on these arguments. Under an alternative framework for intentional discrimination called the Arlington Heights approach, courts look to a ''mosaic'' of factors, that when taken together, can demonstrate discriminatory intent. These factors might include: (i) statistics demonstrating a pattern of discriminatory effect; (ii) historical background; (iii) the sequence of events leading up to the decision; (iv) departures from normal procedures or conclusions; (v) relevant legislative or administrative history; and (vi) a consistent pattern of actions that impose a much greater harm on minorities than non-minorities. Would this type of framework be better suited to this context? Why or why not? Are there other frameworks we should consider? Rather than adopting a framework for case-by-case review, should we simply list prohibited practices? Would that approach adequately address digital discrimination of access or would it be too limited to adequately capture all instances of digital discrimination of access? How could that approach evolve with changing practices and a changing market? Alternatively, does the inaccessibility of intent evidence require some form of burden shifting framework?

b. Enforcement

68. If we were to adopt a broad prohibition on digital discrimination, we seek comment on the most effective framework for enforcing it. In the *Notice of Inquiry,* we sought comment on whether we should establish an alternative complaint process, separate from our existing informal complaint system, for violations of the rules we adopt. We now seek comment on whether to rely on the standard FCC enforcement model, establish a complaint system, or enable or empower third parties to enforce the rules we adopt, and on the scope of our authority to adopt each approach.

69. *FCC Enforcement.* We seek comment on whether our current FCC enforcement capabilities are the best and most effective avenue to accomplish congressional intent. Are there certain characteristics or features of our various enforcement processes that would make it difficult for us to enforce compliance with our rules implementing section 60506? If so, how might we address those issues so as to effectively enforce the rules we ultimately adopt? TURN encourages us to consider using our existing enforcement toolkit of letters of inquiry, notice of apparent liability, and forfeiture orders to enforce our rules prohibiting digital discrimination of access. We seek comment on these ideas and on whether these tools are appropriate and sufficient for enforcing claims of digital discrimination of access. Should we rely principally or exclusively on FCC staff-initiated investigations to enforce our rules, with the possibility of monetary forfeitures or other penalties for offending conduct? Would such an approach unduly constrain enforcement of the rules by channeling most, if not all, of the enforcement activity through our investigations staff? Are there better, more effective ways for us to enforce our rules in this context? If we adopt a burden-shifting analysis for enforcement of any prohibition we adopt, is the Commission's traditional investigative process sufficiently flexible to accommodate such a framework? Or would we need to modify or adopt new processes to enable a burden-shifting analysis?

70. We seek comment on the punishments or remedies the Commission could impose and award as part of our enforcement of rules prohibiting digital discrimination of access. Are monetary forfeitures the appropriate punishment in proven cases of digital discrimination of access? What other punishments or remedies might be appropriate? The Leadership Conference on Civil and Human Rights urges us to create rules that will enable us to effectively collect any financial penalties we impose. We seek comment on what rules we might adopt to ensure our ability to collect any monetary forfeitures we might impose upon determining that a respondent has engaged in digital discrimination of access. Many of our staff-initiated investigations of alleged violations of the Communications Act or our rules are resolved through consent decrees. The Leadership Conference on Civil and Human Rights argues that, for consent decrees to be effective in the context of digital discrimination of access, we need to have sufficient ''capacity to monitor and ensure that any consent decrees are fully complied with.'' We seek comment on what changes, if any, we should make to our consent decree process to ensure it is an effective remedy in this context. Are there options other than fines and consent decrees that we should consider as possible remedies?

71. We seek comment on our authority to address violations of any rules prohibiting digital discrimination of access we adopt through Commission enforcement. Are there limitations on our ability to enforce violations of such rules or act upon complaints of digital discrimination of access? (The Communications Act general enforcement and penal authority are provided for in section 401 and Title V of the Communications Act.) The Commission routinely uses section 503 authority under the Communications Act to impose monetary forfeitures against those who, among other things, ''willfully or repeatedly'' violate ''any rule, regulation, or order issued by the Commission.'' Violations of Commission rules can also be enforced under sections 501, 502, and 401 of the Communications Act. AT&T argues that the Communications Act's Subchapter V enforcement remedies may not be available to the Commission because section 60506 was not enacted ''as part of the Communications Act even though [Congress] explicitly [took] that step with other Infrastructure Act provisions.'' We seek comment on this argument and on whether we lack authority to enforce rules adopted consistent with congressional direction in section 60506. Does the inclusion of subsection 60506(e), which requires us to revise our ''public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination,'' evidence Congress's intent that the Commission act on digital discrimination complaints and enforce rules prohibiting digital discrimination of access? Does the inclusion of subsection 60506(b), which directs us to adopt rules to ''facilitate

equal access'' including addressing digital discrimination of access, evidence the same? Do we have either direct or ancillary authority under section 4(i) of the Communications Act to enforce rules prohibiting digital discrimination of access as necessary to discharge our statutory mandate of ''preventing'' digital discrimination of access? Could we enforce these rules in other ways, such as by barring offending providers from participating in funding programs or finding that violations of our digital discrimination rules raise character qualification issues? Should we expand our character policy statement to include violations of our rules barring digital discrimination of access? If so, how? Should it apply only to a pattern of discrimination?

72. *Structured Complaint Process.* We next seek comment on whether we should establish a structured process for adjudicating formal complaints alleging violations of any rules we adopt in this proceeding. Under our informal consumer process, discussed above, there is no filing fee and any complaints would aid the Commission in identifying potential areas for investigation. A structured complaint process, in contrast, would include a more defined dispute mechanism that results in a Commission determination on the issue, such as currently exists under our rules promulgated pursuant to section 208 of the Communications Act. WISPA argues that there is no need for the Commission to create an alternative complaint process because our informal consumer complaint process is sufficient, and other commenters argue that a complaint process requiring provider response and formal Commission adjudication may be overly burdensome. We seek comment on whether we should adopt a structured complaint process to provide parties with the flexibility to choose between two systems. Would our structured complaint process be accessible to and effective for complainants, or would the resource imbalance between consumers and providers render the process ineffective at resolving complaints of digital discrimination? Are there steps we could take to ensure that our structured complaint process is accessible and effective? And would a structured complaint system be unduly burdensome to the Commission, providers, or complainants? Does that burden outweigh any benefits that might be offered by such a formal complaint process? Would our decision to adopt a particular definition of digital discrimination of access, or to adopt a particular analytical framework for claims of digital discrimination of access, have any bearing on what types of complaint processes we should create?

73. If the Commission were to adopt a structured complaint process for claims of digital discrimination of access, we seek comment on the design of this process and remedies it could provide. Should we model our complaint process on the existing complaint process established pursuant to section 208 of the Communications Act? Under section 208, complainants can file using an informal or formal process. Under the informal process, the complainant submits a statement in writing identifying the carrier against which the complaint is made, a complete statement of facts and the relief sought. No fee is required and the Commission will transmit the complaint to the carrier for investigation with a prescribed response time. In contrast, the formal complaint process requires a fee and is similar to civil litigation in that it involves a complaint, answer, reply, and often discovery, motions and briefs. Formal complaints require the complainant to include in the complaint specific facts and evidence supporting all claims in the complaint. What aspects of these section 208 complaint processes should we incorporate into any new process we might establish? As Leadership Conference on Civil and Human Rights advocates, would the three-part burden shifting process courts use to examine complaints brought under section 202 be instructive? If we were to adopt a similar framework, what modifications, if any, would we make to best apply it to the context of this proceeding? Should we maintain a separate informal and formal process for digital discrimination of access complaints or should we consolidate and just have one complaint process? If we just have one, what aspects would we retain from each process? Would it be appropriate to permit fact discovery in such a process? If so, how could that process be tailored to avoid undue burdens while providing relevant information? We also seek comment on whether a dispute assistance process modeled after § 14.32 of the Commission's rules would be useful in the context of resolving claims of digital discrimination of access. Under this system, a consumer or other party can submit to the Commission a claim that a manufacturer or service provider is acting in violation of certain sections of the Communications Act and Commission rules, the Commission forwards the request for dispute assistance to the specified provider/manufacturer and assists the claimant and provider/manufacturer in reaching a settlement. If after thirty days a settlement has not been reached, the claimant can file an informal complaint with the Commission. Would a similar system aid in the timely and effective resolution of digital discrimination claims?

74. We further seek comment on whether we should borrow aspects of the Equal Employment Opportunity Commission's (EEOC) complaint adjudication model. For example, similar to EEOC processes, should we authorize an expert within the Commission to review and investigate complaints and vest such expert with the authority to dismiss the complaint or issue a ''non-binding probable cause determination letter''? Would this, as the Multicultural Media, Telecom and internet Council argues, encourage settlement, prevent the Commission from being overwhelmed with complaints, and still ensure that individuals have access to the legal system if necessary? As with the EEOC's process, should we also include a voluntary alternative dispute resolution option such as mediation? How could we design any complaint process to ensure it is not abused, promotes transparency, and mitigates any privacy concerns? What remedies could the Commission offer to consumers that successfully prove a claim of digital discrimination of access? Would a financial penalty be a meaningful remedy in most such cases? Or would we need to direct the provider or target of the complaint to take certain action? Are there other models of enforcement employed in similar regulatory regimes by other Federal agencies that would be appropriate for consideration here?

75. We seek comment on any limits to our authority to adopt a structured complaint process for claims of digital discrimination of access. Do we have authority under section 208 of the Communications Act to accept and investigate claims of violations of rules prohibiting digital discrimination of access? If not, do we have authority to create a new formal complaint process under section 60506, whether under subsection 60506(e)'s direction to revise our complaint process or some other provision? If not, on what basis do we ''ha[ve] the power to review and act upon'' complaints sua sponte, as Public Knowledge argues? Are there other sources of authority we could rely on to create a structured complaint process? Does the scope of our authority to adopt a structured complaint process depend in any way on whether we define

discrimination as based on disparate impact or disparate treatment? If we have authority to create a complaint process, are there nonetheless limits on our authority to offer complainants certain types of relief, or any relief at all?

76. *State and Local Enforcement.* We also seek comment on what processes our rules could include for two suggestions put forth in the record: enforcement by state and local officials, and by private right of action. In what ways might we incorporate state and local officials into our enforcement approach for claims of digital discrimination of access, and what roles might we play in state and local enforcement schemes? Should we encourage states and localities to adopt and enforce independently rules that are substantively similar to those we adopt in this proceeding? What other models of coordination with state and local officials might we look to when considering the enforcement of our rules? Do we have authority to create rights that private parties could enforce or prosecute before state and local governmental bodies or in the courts? On what basis, and before which entities would we do so? Should we interpret section 60506 as solely directing the Commission to update its administrative complaint process and not providing separate authority to create a private right of action?

77. *Other Enforcement Processes.* Are there any other enforcement processes, beyond the three categories identified above, that we should consider creating or adopting? What would those processes be, and why would they be better suited to enforcing our rules than the processes discussed above?

2. Affirmative Obligations

78. We next seek comment on what affirmative obligations we could place on providers to address digital discrimination of access. In the *Notice of Inquiry,* we sought comment on whether the Commission should ''adopt rules to require, encourage, or otherwise incentivize'' covered entities to ''take affirmative steps to prevent digital discrimination.'' In response, commenters offer various proposals about steps providers could affirmatively take to address digital discrimination of access, including having providers voluntarily devise and adopt plans to address digital equity, mirroring rules from other agencies, and providing consumers information that could highlight potential discrimination. We seek comment on these proposals.

79. First, we seek comment on Microsoft's proposal for providers to use Commission data to formulate plans to address digital discrimination of access. Microsoft observes that providers, using the new Broadband Data Collection tool, could ''gather demographic and usage information from . . . surveys they would conduct of their subscribers,'' which could then be filed with the Commission. Microsoft asserts that this demographic data could also be used by providers, on a voluntary basis, to ''create a plan to enhance digital equity in their operations,'' which would act as ''an early step'' in identifying issues involving digital discrimination. Microsoft argues that the Commission should require submission of such plans before enacting any other rules of its own, as it asserts that both the Commission and industry lack sufficient data on issues regarding digital discrimination. Would this proposal meaningfully address digital discrimination, and should we adopt it? What would such plans look like? Should, as Microsoft argues, the Commission allow providers to adopt such plans on a voluntary basis and have them treated as confidential by the Commission? Although Microsoft argues we should adopt this proposal before adopting rules addressing digital discrimination of access, would this approach nonetheless be a useful complement to other rules we consider in this Notice? If we adopt a broad prohibition on digital discrimination of access, how would this type of transparency regime relate to that prohibition? Would certain practices be expected or required in the filings; and would participation be chilled if providers are concerned that certain practices could evidence noncompliance with our rules?

80. We next seek comment on Leadership Conference on Civil and Human Rights' proposal that the Commission adopt rules mirroring a provision of the Fair Housing Act that requires Department of Housing and Urban Development (HUD) grantees to affirmatively further fair housing. Under this provision, HUD grantees, as recipients of HUD funding, must not only abide by HUD rules on fair housing, but also generally promote equity in housing, although HUD ''does not require any specific form of planning or submission of fair housing plans to HUD.'' The Leadership Conference on Civil and Human Rights argues that the Commission could require providers to do the same with respect to combating digital discrimination, with implementation modeled after HUD's approach. What should rules modeled after HUD's entail in this context? Would it necessitate that covered entities take any specific steps to combat or monitor for instances of digital discrimination of access? Should the Commission impose such an obligation, a variation thereof, or other general requirement? What would such a rule look like, and what would it accomplish in this context?

81. We seek comment on record proposals that we require providers to give information to their subscribers on relevant requirements and resources related to the Infrastructure Act, this proceeding, and digital discrimination of access more generally. For example, TURN proposes that information about programs that subsidize the cost of broadband should be disseminated to consumers by providers. TURN also proposes that providers distribute public safety information regarding ''outages, the need for backup power, [and] emergency phone numbers,'' particularly in low-income areas and those subject to natural disasters. Additionally, TURN and other commenters contend that providers should offer information about how to seek redress if a consumer believes that they have experienced digital discrimination of access. Should we adopt any of these proposals, or do so with any adjustments? How should we require that any such information be distributed, both in terms of frequency and format? (For example, TURN argues that disclosure of available channels for redress in the event of digital discrimination should be made with the same ''frequency that privacy notices are provided and available in various mediums, including, but not limited to, websites, billing inserts, and emails.'') Are there other kinds of information not specified in TURN's comments that covered entities should be required to disseminate? For example, should we require providers to make available information about their service that would promote the ability of consumers to identify when they may be experiencing digital discrimination? What information should we require providers to make available in this respect, and how would we design such a requirement to ensure that consumers can understand the information provided? TechFreedom suggests that proposals requiring dissemination of additional information would increase the price of broadband for consumers by increasing costs to providers. What would the costs be to providers, would they have the effect claimed by TechFreedom, and how do any costs

measure up against the potential benefits of additional disclosures?

82. What other affirmative steps should we consider requiring (whether of providers or others) in order to more effectively combat digital discrimination of access? Are there other types of self-assessment or reporting obligations the Commission should impose? For example, should we require providers to audit whether they may be engaging in practices that could have a disparate impact on groups determined by reference to protected characteristics? How should such audits be conducted and using what standards? Should the Commission require that covered entities report the results of such audits, and if so, how frequently should they be conducted and reported? Should the results of such audits be made public? Are there any other transparency or disclosure requirements we should impose? Should we require providers to disclose or explain to consumers why offerings (whether in terms of price, speed, or other aspects) differ as between two given geographic areas? Should we adopt rules modeled on cable franchising rules to promote the build-out of broadband infrastructure? Should we require that providers offer consumers written materials in multiple languages? Are there other rules, whether from other agencies, state and local governments, or other entities, that we should look to? Should we consider different auditing and/or reporting requirements for different types of entities?

3. Other Proceedings

83. We seek further detailed comment on what actions we should take in other policy areas identified in the record to address digital discrimination of access. In response to the *Notice of Inquiry,* commenters identified a variety of proceedings in which we could take action to address digital discrimination.

84. We first seek comment on actions we could take to promote infrastructure deployment in furtherance of our goal to address digital discrimination. Commenters identify topics including addressing state and local laws that may impact infrastructure deployment, spectrum policy, and municipal broadband as areas for further Commission action to address digital discrimination. We seek comment on what specific action we should take in these proceedings to address digital discrimination, and how that action furthers the goals identified by Congress in section 60506. We seek further comment on the record's focus on issues regarding broadband service in multiple tenant environments (MTEs) such as apartment buildings and offices. Commenters cite issues such as conflicts over access to inside wiring; insufficient infrastructure for high-speed broadband; lack of economic incentives for providers in low-income communities; and exclusive rooftop access agreements as areas in which the Commission could act to address digital discrimination of access. Should we address some or all of these issues in the MTEs proceeding to combat digital discrimination of access? How specifically would these actions do so?

85. We also seek comment on the record discussion about whether and how the Commission can use its funding programs to combat digital discrimination of access. What programs should the Commission consider using in undertaking this effort? What programs relate to digital discrimination of access and how? What kinds of modifications, if any, would need to these programs? Are there any statutory barriers to using these programs to combat digital discrimination of access? Further, we seek comment on record arguments that inclusion of section 60506 in Division F of the Infrastructure Act signals that the Commission should focus on providing funding in its efforts to prevent digital discrimination. AT&T argues, for example, that the Infrastructure Act primarily concerns spending and that section 60506's directive to facilitate equal access, read in this context, primarily represents a funding commitment. Is this interpretation correct? Or should we understand section 60506 to direct us to take separate and complementary action from that elaborated elsewhere in the Infrastructure Act? Does the inclusion of section 60506 counsel us to tie our funding efforts to preventing and eliminating digital discrimination? Should our existing funding programs be revised in any way to ensure they do not perpetuate existing inequities? Should receipt of funds be contingent on compliance with anti-discrimination requirements? Should the Commission coordinate with other agencies to ensure such requirements apply to other Federal funding programs, including the National Telecommunications and Information Administration's (NTIA) Broadband Equity, Access, and Deployment (BEAD) Program? What is the relationship, if any, between section 60506(c) and the BEAD Program and other Federal broadband deployment funding efforts?

4. Other Record Proposals

86. We seek comment on other record proposals for action we should take to fulfill congressional direction to address digital discrimination of access beyond the proposals discussed above. In response to the *Notice of Inquiry,* commenters suggest various other proposals such as assisting those on Tribal lands, undertaking outreach efforts to promote awareness of any digital discrimination rules we adopt, and making organizational changes to the Commission. We seek further comment on these proposals and any additional steps we should take to eliminate digital discrimination of access.

87. *Tribal Lands.* We seek comment on any actions we can take to address digital discrimination of access on Tribal lands. In response to the *Notice of Inquiry,* one commenter argues that we should take dedicated action to facilitate equal access on Tribal lands, including by ''offer[ing] technical assistance to Tribal Nations planning their own networks . . . creat[ing] a resource to connect Tribes and infrastructure partners . . . [and] connect[ing] infrastructure partners interest in working with Tribal Nations with training'' on issues unique to deploying infrastructure on Tribal lands. We seek comment on these record proposals and whether to adopt them, following engagement with Tribal partners. In what specific ways do those living on Tribal lands uniquely experience digital discrimination of access? Is dedicated action necessary to address those issues, or can they be addressed by more general rules addressing digital discrimination of access? Would some or all of these record proposals effectively address any unique digital discrimination of access faced by those living on Tribal lands, and would they do so more effectively with any modifications? Are there other proposals we should consider?

88. *Outreach.* We next seek comment on addressing digital discrimination of access through outreach efforts. Numerous commenters in the record express support for educational efforts to promote digital literacy, including developing a digital literacy program to raise awareness of the benefits and availability of broadband and using available FCC data to help NTIA direct funds for digital literacy to communities most in need, arguing that these efforts can address a lack of adoption in areas where providers have already deployed broadband. Another commenter advocates that the Commission create an outreach program to educate consumers on any rules we adopt addressing digital discrimination of access and the avenues of relief available to them. We seek comment on these proposals in particular and whether dedicated

outreach efforts to promote digital literacy and awareness of our rules would further prevention or elimination of digital discrimination of access. Would digital education efforts be effective to promote adoption? If so, what specific digital education efforts should we pursue, and should we pursue the suggestions in the record? What issues would be most useful to educate consumers about? Are there entities or organizations we should collaborate with if we undertake digital education efforts? What steps would most effectively promote awareness of any digital discrimination rules we adopt? Should we take steps beyond those our Consumer and Governmental Affairs Bureau routinely takes to advise consumers about Commission rules and public-facing processes? If so, what steps should we take?

89. *Commission Organization.* We seek comment on any organizational changes we should make to the Commission to promote our efforts to address digital discrimination of access and assist in enforcement of any rules we adopt. Commenters to the *Notice of Inquiry* offer that we should hire staff with experience in discrimination law and argue that we should establish a dedicated ombudsperson role and Office of Civil Rights as part of our process for addressing claims of digital discrimination of access. Should we pursue these organizational changes? What would be the benefits of establishing an ombudsperson for digital discrimination, and what specific responsibilities would they have? Should an ombudsperson publish an annual report? Would an independent, impartial, and confidential ombudsperson be useful for consumers and entities subject to our rules in navigating any rules and complaint processes we adopt? Would it be useful to house an ombudsperson, and any Commission staff with expertise on discrimination issues, in an Office of Civil Rights? Would establishing a new organizational unit be preferable to distributing this expertise among the Commission's current Bureaus and Offices? If we did establish an Office of Civil Rights, what issues would such an office oversee, what would be the scope of its authority and responsibilities, and how would it relate to existing Commission organizational units such as the Office of Native Affairs and Policy?

90. *Other Necessary Steps.* We seek comment on any other steps we should take to eliminate digital discrimination of access. Section 60506 directs us to ''identify[ ] necessary steps for the Commission[ ] to take to eliminate'' digital discrimination of access. What steps, beyond adopting and enforcing rules to ''prevent'' digital discrimination of access, are necessary for the Commission to take to ''eliminate'' such discrimination? And how would any such steps specifically ''eliminate'' digital discrimination of access rather than ''prevent'' it?

5. Legal Authority

91. We seek comment on the scope of our authority to adopt rules under section 60506 of the Infrastructure Act. Do the novel structure and language of section 60506 provide the Commission with broad rulemaking authority? Paragraph (b) of section 60506 gives us the broad direction to ''adopt final rules to facilitate equal access to broadband . . . including'' addressing digital discrimination of access. Since this grant ''include[s]'' adopting rules to address digital discrimination of access, can the Commission adopt rules to facilitate equal access that address issues other than, but related to, digital discrimination of access? If so, what issues do commenters believe we have the authority to address under section 60506 of the Infrastructure Act? We also observe that while anti-discrimination laws often revolve around a prohibition of a policy or practice, Congress in this instance gave us the broad direction and the authority to develop our own rules to ''facilitate equal access,'' of which addressing digital discrimination of access is a part. Does this structure signify a broad grant of authority to combat digital discrimination of access as part of efforts to ''facilitate equal access to broadband''? Is that authority broader, or narrower, than that given to other Federal agencies tasked with administering and enforcing statutory prohibitions on discrimination? We seek comment on the scope of the Commission's rulemaking authority in light of the structure and language of section 60506 of the Infrastructure Act.

92. We seek further comment on our authority under paragraphs (b)(1) and (b)(2) of section 60506. In the *Notice of Inquiry,* the Commission sought comment on whether ''preventing digital discrimination'' in paragraph (b)(1) and ''eliminat[ing] discrimination'' in paragraph (b)(2) provided the Commission with distinct authority to enact digital discrimination rules. Commenters agree that ''prevent'' and ''eliminate'' offer different authority, and that ''prevent'' confers upon the Commission the authority to stop digital discrimination before it occurs. Regarding ''eliminate,'' some commenters argue that the term allows the Commission to remove discrimination that already exists and the impact thereof. Other commenters argue that ''eliminate'' does not provide the Commission with the authority to impose ''retroactive liability'' for past deployment decisions. We seek further comment on the authority offered by each of these terms. Does the word ''prevent'' give us broad discretion to adopt prophylactic measures to stop digital discrimination of access from occurring going forward? What are the bounds of that authority? How does that authority differ from a more standard prohibition on discriminatory conduct or outcomes? What does the word ''eliminate'' offer? Does it give us discretion to address digital discrimination of access that already exists? Is there a distinction between addressing currently existing digital discrimination of access and imposing ''retroactive liability''? Does the statutory language that we should ''identify[ ] necessary steps . . . to eliminate [digital] discrimination'' in any way guide how we understand this direction? Did Congress intend for us to merely identify steps, and not take them? Since this term is used in the context of our greater direction to ''facilitate equal access,'' do we nonetheless have discretion to address current-existent digital discrimination of access as part of that effort? In considering our authority under section 60506, should we understand it as a ''civil rights'' statute or a ''universal service'' statute, and what is the significance of either interpretation?

D. State and Local Model Policies and Best Practices

93. We propose to adopt, as guidelines for states and localities, the best practices to prevent digital discrimination and promote digital equity recommended by the Communications Equity and Diversity Council (CEDC). Subsection 60506(d) of the Infrastructure Act directed the Commission to ''develop model policies and best practices that can be adopted by states and localities to ensure that broadband internet access service providers do not engage in digital discrimination.'' To help fulfill this direction, Chairwoman Rosenworcel directed the CEDC to issue recommendations on this subject. The Digital Equity and Inclusion (DEI) Working Group issued a report recommending both (1) model policies and best practices to prevent digital discrimination by broadband providers, and (2) best practices to advance digital equity for states and localities. On November 7, 2022, the members of the full CEDC voted unanimously in favor

of finalizing the report for the Commission. We now propose to adopt both sets of recommendations as guidelines for states and localities, in fulfillment of subsection 60506(d), acknowledging that this does not limit states and localities from taking additional steps to prevent and eliminate digital discrimination of access, and seek comment on this proposal.

94. First, we seek comment on our proposal to adopt the report's ''Model Policies and Best Practices to Prevent Digital Discrimination by ISPs.'' The report outlines six model policies and best practices for states and localities: (1) developing and making available recurring ''broadband equity assessments''; (2) facilitating awareness among landlords regarding ''tenant choice and competition'' in MTEs; (3) identifying ways to ''incentivize equitable deployment''; (4) managing public property (such as rights-of-way) ''to avert discriminatory behaviors that result in or sustain digital discrimination and redlining''; (5) convening regular meetings of stakeholders to evaluate ''areas and households unserved and underserved with competitive and quality broadband options''; and (6) encouraging ''fair competition and choice.'' These model policies and best practices reflect the perspective of the industry, public interest stakeholders, local government representatives, and others, and we tentatively conclude that adopting these consensus recommendations will be effective in addressing digital discrimination of access at the state and local level. We seek comment on whether to adopt these best practices. Do they provide states and localities with the tools and resources necessary to provide equal access to broadband service in their communities? And do they appropriately cover the scope of issues these model policies and best practices should address? Should any be removed, or should we consider adding any additional model policies and best practices? We seek comment on whether the best practices, as recommended in the report, can be improved and how. We also seek comment on any additional support the Commission can provide to states, localities, and internet service providers to effectuate these recommendations.

95. Second, we seek comment on our proposal to adopt the report's ''Best Practices to Advance Digital Equity for State and Localities.'' The report outlines thirteen model policies and best practices for states and localities, which, in sum, recommend: (1) raising awareness about and streamlining the application process for government benefit programs such as the Affordable Connectivity Program; (2) promoting digital literacy; and (3) increasing access to devices and spaces to access the internet. The best practices to advance digital equity for state and localities reflect the consensus of industry and public interest stakeholders, and we believe that they can serve as an effective framework for states and localities to advance digital equity. We seek comment on whether to adopt these best practices as guidelines for states and localities. Do they equip states and localities with the tools and resources necessary to advance digital equity? And do they appropriately cover the scope of issues these model best practices should address? Should any be removed, or should we consider adding any additional best practices? We seek comment on whether the best practices, as recommended in the report, can be improved, and how.

E. Other Efforts To Promote Digital Equity and Inclusion

96. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. (Section 1 of the Communications Act of 1934 as amended provides that the FCC ''regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'') (The term ''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders, and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.) Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. Initial Regulatory Flexibility Analysis

97. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*NPRM*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM.* The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for and Objectives of the Proposed Rules

98. The *NPRM* furthers the Commission's efforts to promote equal access to broadband to all people living in the Nation. Specifically, the *NPRM* seeks focused comment on the rules the Commission should adopt to fulfill the congressional direction in section 60506 of the Infrastructure Act to facilitate equal access to broadband, prevent digital discrimination of access, and identify steps necessary to eliminate such discrimination. The *NPRM* also proposes and seeks comment on possible definitions of ''digital discrimination of access'' as used in the Infrastructure Act. The *NPRM* next proposes to revise the Commission's public complaint process to accept complaints related to digital discrimination. The *NPRM* also proposes to adopt the model policies and best practices for states and localities regarding digital discrimination that have been recommended by the Communications Equity and Diversity Council.

B. Legal Basis

99. The *NPRM* proposes to identify authority under section 60506 of the Infrastructure Act and seeks comment on the bounds of the Commission's authority to enact the proposed rules.

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

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

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

102. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. (The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.) Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

103. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. (While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.) Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.'' (This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments—Organizations tbls.5, 6 & 10.)

1. Wireline Carriers

104. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including voice over internet protocol (VoIP) services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. (Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.)

105. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

106. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. (Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers,

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

107. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. (Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.) Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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

109. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. Based on industry data, only six cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. (The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR 76.910(b).) Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

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

2. Wireless Carriers

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

112. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than of these providers can be considered small entities.

3. Resellers

113. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

114. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

4. Other Entities

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

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

116. The *NPRM* proposes to revise the Commission's public complaint process to accept complaints regarding digital discrimination of access, as directed in section 60506 of the Infrastructure Act by: (1) adding a dedicated pathway for digital discrimination of access complaints; (2) collecting voluntary demographic information from filers who submit digital discrimination of access complaints; and (3) establishing a clear pathway for organizations to submit digital discrimination of access complaints. The *NPRM* seeks comment on these proposals. The *NPRM* also seeks comment and any other changes that the Commission should make to the public complaint process to accept complaints related to digital discrimination of access. The *NPRM* also seeks comment on record proposals to place affirmative obligations the Commission should place on broadband providers, including reporting and recordkeeping requirements.

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

117. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

118. The *NPRM* seeks comment how to incorporate section 60506 of the Infrastructure Act's direction to account for ''technical and economic feasibility'' in the Commission's definition of ''digital discrimination of access,''

including issues of technical and economic feasibility faced by small entities. The *NPRM* also seeks comment on the burden that various record proposals to combat digital discrimination of access would place on covered entities, including small entities, and ways to minimize that burden.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

119. None.

V. Procedural Matters

120. *Ex Parte Requirements.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule § 1.1206(b). In proceedings governed by Rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

121. *Paperwork Reduction Act.* This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

VI. Ordering Clauses

122. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i)–(j), 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) through (j), 303(r), and section 60506 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1245–46 (2021), codified at 47 U.S.C. 1754, that the Notice of Proposed Rulemaking *is adopted*.

123. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days after publication in the **Federal Register**, and reply comments on or before 60 days after publication in the **Federal Register**.

124. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center SHALL SEND a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–00551 Filed 1–19–23; 8:45 am]

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Notices

Federal Register
Vol. 88, No. 13
Friday, January 20, 2023

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

Rural Business-Cooperative Service

[DOCKET #: RBS–22–BUSINESS–0026]

Notice of Funding Opportunity for the Rural Innovation Stronger Economy (RISE) Grant Program for Fiscal Year 2023

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS, Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), invites applications under the Rural Innovation Stronger Economy (RISE) program for fiscal year (FY) 2023, subject to the availability of funding. The Agency has $2,000,000 available for the RISE Program for FY 2023. Selected applicants will use Agency grant funds to provide financial assistance in support of innovation centers and job accelerator programs that improve the ability of distressed rural communities to create high wage jobs, accelerate the formation of new businesses, and help rural communities identify and maximize local assets. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications must be submitted electronically by no later than 11:59 p.m. Eastern Time April 20, 2023, through *www.grants.gov* to be eligible for grant funding. Please review the *Grants.gov* website for instructions on the process of registering your organization as soon as possible to ensure that you are able to meet the electronic application deadline. The Agency will not consider any application(s) received after the deadline and that are not submitted through *www.grants.gov.* Potential applicants may submit a concept proposal for review by the Agency to *www.grants.gov* by 4:30 p.m. local time on February 21, 2023 in compliance with 7 CFR 4284.1115(a). The application and Concept Proposal deadline dates and time are firm.

ADDRESSES: Entities wishing to apply for a RISE grant, or to submit a Concept Proposal for their project, may download the application documents and requirements delineated in this Notice from the RD RISE website: *https://rd.usda.gov/programs.* Information for the submission of an electronic application may be found at: *https://www.Grants.gov.* Concept Proposals containing elements outlined in Section D.2 of this Notice must be submitted to *https://www.Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Reister, Program Management Division, RBCS, USDA, 1400 Independence Avenue SW, Mail Stop-3226, Washington, DC 20250–3226, (202) 720–1400 or email: *rachel.reister@usda.gov.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Innovation Stronger Economy Grant Program.

Announcement Type: Notice of Funding Opportunity.

Funding Opportunity Number: RD–RBS–23–01–RISE.

Assistance Listing: 10.755.

Dates: Electronic applications must be received and accepted by no later than 11:59 Eastern Time, April 20, 2023, or they will not be considered for funding.

Potential applicants may submit a concept proposal for review by the Agency to *https://www.grants.gov:* February 21, 2023 in compliance with 7 CFR 4284.1115(a). Submission of a concept proposal is not an application for program funds.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities to recover economically through more and better market opportunities and through improved infrastructure;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. Purpose of the Program. The RISE program is a grant program to help struggling communities by funding job accelerators in low-income rural communities. The primary objective of the RISE program is to support jobs accelerator partnerships to improve the ability of distressed rural communities to create high wage jobs, accelerate the formation of new businesses through innovation centers, and help rural communities identify and maximize local assets.

2. Statutory Authority. The RISE program is a grant program authorized under section 379I of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008w). The regulations governing this program are published at 7 CFR part 4284, subpart L.

3. Definitions. The definitions applicable to this Notice are published at 7 CFR 4284.1103. In addition, the terms ''rural'' and ''rural area,'' are defined at section 379I of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)) and will be used for this program.

4. Application of Awards. The Agency will review, evaluate, and score applications received in response to this Notice based on the provisions found in 7 CFR 4284.1117, Scoring RISE grant applications, and as indicated in this Notice. Awards under the RISE program will be made on a competitive basis using specific selection criteria contained in 7 CFR 4284.1118, Selecting RISE grant applications for award. The Agency will award RISE grants in accordance with 7 CFR 4284.1119, Awarding and Administering RISE Grants.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: FY 2023.

Available Funds: Funding is $2,000,000. RBCS may at its discretion, increase the total level of funding available in this funding round or in any category in this funding round from any available source provided the awards meet the requirements of the statute

which made the funding available to the agency.

Award Amounts: The minimum award amount per grant is $500,000 and the maximum award amount per grant is $2,000,000, as authorized by Section 379I of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008w).

Anticipated Award Date: September 15, 2023.

Anticipated Performance Period: September 15, 2023 through December 31, 2027.

Renewal or Supplemental Awards: None.

Type of Assistance Instrument: Grant Agreement.

C. Eligibility Information

1. Eligible Applicants. An eligible applicant must be a rural jobs accelerator partnership formed after December 20, 2018, and meet the eligibility criteria found in 7 CFR 4284.1112 and this Notice to apply for this program. Eligibility exclusions are as follows:

(a) Individuals and individual entities such as businesses, are not eligible applicants for the RISE program.

(b) An applicant is not eligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' The Agency will check the System for Award Management (SAM) at the time of application and prior to funding any grant award to determine if the applicant has been debarred or suspended. In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. See 7 CFR 4284.1109. The applicant must certify as part of the application that they do not have an outstanding judgment against them. The Agency will check the Do Not Pay System at the time of application and also prior to funding any grant award to verify this information.

(c) Any corporation that has been convicted of a felony criminal violation under any Federal law within the past 24 months or that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

Applications that fail to meet any of these requirements by the application deadline will be deemed ineligible and will not be evaluated further.

2. Cost Sharing or Matching. The matching funds requirement is 20 percent of the eligible project costs of any activity carried out using RISE grant funds. Matching funds must be available throughout the grant term and applied individually to each RISE activity. Grant funds may only be used for up to 80 percent of an eligible RISE activity. Additional information on matching funds is found at 7 CFR 4284.1114. When calculating the matching funds requirement, round to whole dollars as appropriate. The matching funds requirement is calculated by multiplying the total eligible project costs of each eligible RISE activity by 0.20. The amount of matching funds required for the RISE activities is then added together to obtain the total amount of non-Federal matching funds required for the project. Applications that only provide matching funds equal to 20 percent of the grant amount will be deemed ineligible due to an insufficient matching funds amount.

A written commitment of matching funds must be provided to verify that all matching funds are available during the grant period and this documentation should be included in the application in accordance with requirements identified in Section D.2 of this Notice. If an applicant is awarded a grant, additional verification documentation may be required to confirm the availability of matching funds for the duration of the grant term.

Matching funds must meet all of the following:

(a) They must be spent on eligible expenses during the grant period.

(b) They must be from eligible sources.

(c) They must be spent in advance or as a pro-rata portion of grant funds being spent.

(d) They must be provided by either the applicant or a third party in the form of cash or an in-kind contribution.

(e) They cannot include other Federal grants unless provided by authorizing legislation.

(f) They cannot include cash or in-kind contributions donated outside of the grant period.

(g) They cannot include over-valued, in-kind contributions.

(h) They cannot include any project costs that are ineligible under the RISE program.

(i) They cannot be used for ineligible grant purposes as stated in 7 CFR 4284.1114, 2 CFR part 200, subpart E, ''Cost Principles,'' and the most current Federal Acquisition Regulation (for-profits) or successor regulations.

(j) They can include reasonable and customary travel expenses for staff delivering the RISE program if written policies explaining how these costs are normally reimbursed, including rates, have been established. An explanation of this policy must be included in the application or the contributions will not be considered as eligible matching funds.

(k) Applicants must be able to document and verify the number of hours worked and the value associated with any in-kind contribution being used to meet a matching funds requirement.

(l) In-kind contributions provided by individuals, businesses, or cooperatives which are being assisted by the Applicant cannot provide any direct benefit to their own projects as the Agency considers this to be a conflict of interest or the appearance of a conflict of interest.

3. *Other Eligibility Requirements.*

(a) *Purpose Eligibility.* Applications must propose the establishment of an innovation center and/or costs directly related to operations of an innovation center and/or costs directly associated with support of programs to be carried out at or in direct partnership with job accelerators as outlined in 7 CFR 4284.1113. The Applicant project outcome must accelerate the formation of new businesses with high-growth potential, improve the ability of rural businesses and distressed rural communities to create high-wage jobs, and strengthen rural regional economies. Project funds, including grant and matching funds, must be for eligible purposes only as outlined in 7 CFR 4284.1114.

(b) *Project Eligibility.* All project activities must be for the benefit of communities, industries and residents located in a rural area, as defined. The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility. Projects involving the construction of an

innovation center as an eligible purpose are subject to the environmental requirements of 7 CFR part 1970, as well as the applicable design and construction requirements of RD and the adopted codes of the jurisdiction.

(c) *Additional Eligibility Requirements.*

(i) The rural jobs accelerator partnership must have a lead applicant who is responsible for the administration of the grant proceeds and activities. A lead applicant will be the named applicant on Agency documents and must be one of the following entities listed in 7 CFR 4284.1112(b), which is as follows:

(1) A district organization;

(2) An Indian Tribe or a political subdivision of a Tribe, including units, divisions and branches of a tribal government engaged in economic development activities, or a consortium of Indian Tribes;

(3) A State or a political subdivision of a State, including a special purpose unit of a State or local government engaged in economic development activities, or a consortium of political subdivisions;

(4) An institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a consortium of institutions of higher education; or

(5) A public or private nonprofit organization.

(ii) The Lead Applicant must be registered in the System for Award Management (SAM) prior to submitting an application. The Lead Applicant must also maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. All other restrictions in this Notice will apply.

(iii) Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6 of this Notice. Inclusion of funding restrictions outlined in Section D.6 of this Notice precludes the Agency from making a federal award.

(d) *Completeness.* An application will not be considered for funding if it fails to meet an eligibility criterion by the time of application deadline or does not provide sufficient information to determine eligibility and scoring. Applicants must include all the forms and proposal elements as discussed in the regulation and as clarified further in this Notice in one package. Incomplete applications will not be reviewed by the Agency.

D. Application and Submission Information

1. Address to Request Application Package. For further information and program materials, including an Application Template, contact the RD National Office and/or review the program website at *https://www.rd.usda.gov/programs-services/business-programs/rural-innovation-stronger-economy-rise-grants.* Application information is also available at *www.grants.gov.* If alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) is needed please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

2. Content and Form of Application Submission. An application must contain all of the required elements outlined in 7 CFR 4284.1115. Each application must address the applicable scoring criteria presented in 7 CFR 4284.1117 for the type of funding being requested.

The Application Template provides specific, detailed instructions for each item of a complete application. The Agency strongly encourages the Applicant to use the examples and illustrations in the Application Template to assist in developing a complete application package.

Potential applicants may submit a concept proposal for review by the Agency to *www.grants.gov* by 4:30 p.m. local time on February 21, 2023 in compliance with 7 CFR 4284.1115(a). The concept proposal should be in a narrative format up to 10 pages in length using a minimum of 11-point font and submitted electronically through *www.grants.gov.* The concept proposal must include all items stated in 7 CFR 4284.1115(a). The concept proposal will be evaluated by the Agency and an encouragement or discouragement letter will be issued to the potential applicant. If a discouragement letter is issued, it will detail any weaknesses evaluated in the Agency's review, though a complete application may still be submitted prior to the application deadline. Applicants who submit a concept proposal to the Agency will not need to resubmit the same information with their application. However, submission of a concept proposal is not an application for program funds. Applicants that do not submit a concept proposal may still submit a complete application for Agency review.

Only one application can be submitted per applicant, who is defined as a lead applicant as found in 7 CFR 4284.1112(b). If two applications are submitted by the same lead applicant, both applications will be deemed ineligible for funding. Applications must be submitted electronically through *www.grants.gov.* Applications submitted to the Agency in any format outside of *Grants.gov* will not be considered for funding.

3. System for Award Management and Unique Entity Identifier.

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25. In order to register in SAM, entities will be required to create a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(b) Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicant must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Date and Time.

(a) *Concept Proposal Submittals.* Potential applicants may electronically submit a concept proposal for review by the Agency to *www.grants.gov* no later than February 21, 2023 in compliance with 7 CFR 4284.1115(a) and as stated in Section D.2 of this Notice. Submission of a concept proposal is not an application for program funds.

(b) *Application Deadline Date.* Completed applications must be submitted electronically through *www.grants.gov* by no later than 11:59 p.m. Eastern Time, April 20, 2023, to be eligible for grant funding.

Late or incomplete applications will not be eligible for funding under this grant opportunity. The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency also reserves the right to ask

applicants for clarifying information and additional verification of assertions in the application.

5. Intergovernmental Review of Applications. Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain an SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established an SPOC, or if you do not want to submit a copy of the application, our State Offices will submit your application to the SPOC or other appropriate agency or agencies.''

6. Funding Restrictions.

(a) Please note that no assistance or funding from this grant can be provided to a hemp producer unless they have a valid license issued from an approved State, Tribal or Federal plan as defined by the Agriculture Improvement Act of 2018, Public Law 115–334. Verification of valid hemp licenses will occur at the time of award.

(b) Grant funds may be used to pay for up to 80 percent of eligible project activity costs. Grant funds may be used to pay for costs directly related to the purchase or construction of an innovation center located in a low-income rural area; costs directly related to operations of an innovation center including purchase of equipment, office supplies, and administrative costs including salaries directly related to the project; costs directly associated with support programs to be carried out at or in direct partnership with job accelerators; reasonable and customary travel expenses directly related to job accelerators and at rates in compliance with 2 CFR 200.474; utilities, operating expenses of the innovation center and job accelerator programs and associated programs; and administrative costs of the grantee not exceeding 10% of the grant amount for the duration of the project.

(c) Applications must include a cost and performance plan for no more than a four-year grant period, or it will not be considered for funding. The grant period should begin no earlier than September 15, 2023, and no later than January 1, 2024. Applications that request funds for a project with a performance period ending after December 31, 2027, will not be considered for funding. Projects must be completed within a four-year timeframe. Prior approval is needed from the Agency if applicants are awarded a grant and desire the grant period to begin earlier or later than previously discussed or approved.

The Agency may approve requests to extend the grant period for up to an additional two-year period at its discretion. Further guidance on grant period extensions will be provided in the award document.

(d) Project funds, including grant and matching funds, cannot be used for ineligible grant purposes as stated in 7 CFR 4284.1114, 2 CFR part 200, subpart E, ''Cost Principles,'' and the most current Federal Acquisition Regulation (for-profits) or successor regulations.

(e) In addition, applications will not be considered for funding if it does any of the following:

(i) Focuses assistance on only one business;

(ii) Requests less than the minimum grant amount or more than the maximum grant amount;

(iii) The project budget includes administrative costs in excess of 10 percent of the grant amount; or

(iv) Grant funds will be passed through to a member of the partnership in the form of lease payments or other activities with a conflict of interest or appearance thereof.

7. Other Submission Requirements.

(a) Applications should not be submitted in more than one format or in more than one submission. Applications should be submitted electronically through *www.grants.gov* only. Applications will not be accepted through mail or courier delivery, in-person delivery, email, or fax.

(b) To submit an application electronically, applicants must follow instructions provided at *www.grants.gov.* The *Grants.gov* website provides information about applying electronically as well as the hours of operation. A password is not required to access the website. Applicants are advised to not wait until the application deadline date to begin the application process through *Grants.gov*. The *Grants.gov* downloadable application package for this program may be located by using a keyword, the program name, or the assistance listing number for this program. Instructions for registering an organization can be found at *https://www.grants.gov/web/grants/applicants/organization-registration.html* and should be completed as soon as possible to ensure that the electronic application deadline can be met. *Grants.gov* will not accept applications submitted after the deadline.

(c) There are no specific limitations on the number of pages or other formatting requirements of an application, but a complete application should be in a narrative form using a minimum of 11-point font. The narrative must clearly describe the jobs accelerator partnership, characteristics of the targeted region and targeted industry cluster(s), and how the project meets the RISE program initiatives.

(d) The Agency also reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

E. Application Review Information

1. Criteria. All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR 4284.1117. Failure to address any of the application criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

Priority will be given to projects that will leverage next generation gigabit broadband service to promote entrepreneurship and entities based in geographical areas with established agriculture and technology sectors which are focused on the development of precision and autonomous agriculture technologies as a way to strengthen rural economies and create jobs.

To focus investments in areas resulting in the greatest opportunity for growth in prosperity, the Agency encourages applications that serve the smallest communities with the lowest incomes, with an emphasis on areas where at least 20 percent of the population is living in poverty, according to the American Community Survey data or other comparable data by census tracts or Indian Reservations.

The Agency encourages energy communities to utilize the RISE program to support workforce development; identify and maximize local assets; spur job creation; and connect to regional opportunities, networks, and industry clusters.

2. Review and Selection Process. Applications will be selected for award in accordance with the selection criteria in 7 CFR 4284.1118. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If an application is evaluated as an eligible project, but not funded, it

will not be carried forward into the next competition.

F. Federal Award Administration Information

1. Federal Award Notices.

The Agency will award RISE grants in accordance with 7 CFR 4284.1119. Applicants awarded funding will receive a signed notice of Federal award by postal or electronic mail from the USDA RD State Office where the application was submitted, containing instructions and requirements necessary to proceed with execution and performance of the award. Applicants must comply with all applicable statutes, regulations, and Notice requirements before the grant award will be funded.

If an application is not selected for funding, the Applicant will be notified in writing via postal or electronic mail and informed of any review and appeal rights. See 7 CFR part 11 for USDA National Appeals Division procedures. We anticipate that there will be no available funds for successful appellants once all FY 2023 funds, if available, are awarded and obligated.

2. Administrative and National Policy Requirements. Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4284, subpart L; the Grants and Agreements regulations of the Department of Agriculture codified in 2 CFR parts 180, 400, 415, 417, 418, 421; 2 CFR parts 25, 200, and 170; and 48 CFR 31.2, and successor regulations to these parts.

In addition, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation (see 2 CFR part 170). Applicants will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for awards within this program:

(a) Execution of an Agency-approved financial assistance agreement;

(b) Acceptance of a written letter of conditions; and submission of the following Agency forms:

(1) Form RD 1940–1, ''Request for Obligation of Funds.''

(2) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(3) Form RD 400–1 for construction projects.

3. Reporting. After grant approval and through grant completion, applicants will be required to provide an SF–425, ''Federal Financial Report,'' and a performance report on a semiannual basis (due 30 working days after end of the semiannual period) for the first two years, and then annually thereafter, with the first report submitted no later than six months after receiving a grant under this section. The project performance reports shall include all items listed in paragraph (h)(2) under 7 CFR 4284.1120.

G. Federal Awarding Agency Contact(s)

If you have questions about this Notice, please see the contact provided in the **FOR FURTHER INFORMATION CONTACT** section of this Notice. Applicants wanting to apply for a RISE grant please see the **ADDRESSES** section of this Notice.

H. Build America Buy America Act

The Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58),) requires the following Buy America preference:

(1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

(3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

Awards under this announcement for infrastructure projects to non-federal entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the IIJA, and its implementing regulations. Infrastructure projects include structures, facilities, and equipment that generate, transport, and distribute fuel or energy, including electric vehicle (EV) charging stations. Infrastructure projects also include structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.

In accordance with BABAA, however, USDA has determined that de minimis, small grants, and minor components shall be waived from the requirements of BABAA, pursuant to a public interest waiver that was granted to the Department on Sept. 13, 2022. See *https://www.usda.gov/sites/default/files/documents/usda-departmentwide-de-minimis-small-grans-minor-components-waiver-final-approved-03132022.pdf* . Under such waiver, small grants below the Simplified Acquisition Threshold, which is currently set at $250,000 shall not be subject to BABAA. Additionally, de minimis and minor components, as described in the Department waiver, are also not subject to BABAA. Applicants and projects that are subject to BABAA may request other specific waivers, pursuant to the requirements posted at the USDA Office of the Chief Financial Officer Office website: *https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.*

For-profit entities and other entities not included in the definition of Non-Federal Entities, defined pursuant to 2 CFR 200.1, are not subject to BABAA.

I. Other Information

1. Paperwork Reduction Act. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with this program, as covered in this Notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0075.

2. National Environmental Policy Act. All recipients under this Notice are subject to the requirements of 7 CFR part 1970.

3. Civil Rights Act. All grants made under this Notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A, 7 CFR part 15 Subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964) and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166

(Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

4. Nondiscrimination Statement. In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339 or 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/usda-program-discrimination-complaint-form.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

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Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2023–01005 Filed 1–19–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Census Bureau

2020 Census Tribal Consultation

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Census Bureau will conduct a virtual tribal consultation on the Proof of Concept for the Detailed Demographic and Housing Characteristics File A (DHC–A) on February 23, 2023. Feedback on the Proof of Concept will help inform final decisions on the 2020 Census Detailed DHC–A. The tribal consultation reflects the Census Bureau's continuous commitment to strengthen nation-to-nation relationships with federally recognized tribes. The Census Bureau's procedures for outreach, notice, and consultation ensure involvement of tribes to the extent practicable and permitted by law before making decisions or implementing policies, rules, or programs that affect federally recognized tribal governments. These meetings are open to citizens of federally recognized tribes by invitation. The Census Bureau provided information on the feedback it is seeking in preparation for the tribal consultation focused on the Proof of Concept for the Detailed DHC–A. In that regard, the Census Bureau is asking tribal governments to review the Proof of Concept and accompanying materials. We would like to hear from tribal nations if they will be impacted positively, negatively, or not at all, if we release the Detailed DHC–A using the current specifications outlined in the Proof of Concept. Please provide the level of geography, description of the use case(s), and implications should the data be released as reflected in this Proof of Concept. The purpose of the tribal consultation is to hear tribes' recommendations.

DATES: The Census Bureau will conduct a tribal consultation on Thursday, February 23, 2023, from 3:00 to 4:30 p.m. EST. Any questions or topics to be considered in the tribal consultation meeting must be received in writing via email by February 1, 2023.

Meeting Information: The Census Bureau tribal consultation registration links are: *https://teams.microsoft.com/registration/8RanOlnlzkGlMEfRgxPGAw,TIJcpXM2nESpQgaKulF03g,rT1DtLbTwkezvnebFVFaoQ,ZzDXhAFZE0ek03Iv8U0FIw,PxCl-e6-hUS8tspyPZZeqg,amWW0PlJYEapsx_Qb29SoA?mode=read&tenantId=3aa716f1-e559-41ce-a530-47d18313c603&webinarRing=gcc.*

Submit your comments by email. Send comments to: *2020DAS@census.gov.*

Deadline date for input: March 2, 2023. In the subject line, put ''2020 Census Detailed DHC–A.''

FOR FURTHER INFORMATION CONTACT: Dee Alexander Tribal Affairs Coordinator, Office of Congressional and Intergovernmental Affairs, Intergovernmental Affairs Office, U.S. Census Bureau, Washington, DC 20233; telephone (301) 763–6100; or email at *ocia.tao@census.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, issued November 6, 2000, the Census Bureau has adhered to its tribal consultation policy by seeking the input of tribal governments in the planning and implementation of the 2020 Census with the goal of ensuring the most accurate counts and data for the American Indian and Alaska Native population. The Census Bureau is planning a tribal consultation on February 23, 2023, with federally recognized tribes, so tribes can provide feedback on the Proof of Concept for the Detailed Demographic and Housing Characteristics File A (Detailed DHC–A). The Detailed DHC–A and Detailed DHC–B are successors to the American Indian and Alaska Native Summary File (AIANSF) that was produced in previous censuses. The current Proof of Concept focuses on Detailed DHC–A, and the Census Bureau will provide more information on Detailed DHC–B later. The Detailed DHC–A provides population counts and sex by age statistics for approximately 370 detailed racial and ethnic groups, such as German, Lebanese, Jamaican, Chinese, Native Hawaiian, and Mexican, as well as about 1,200 detailed American Indian and Alaska Native tribal and village population groups, such as Native Village of Hooper Bay (Naparyarmiut) and Navajo Nation. The Proof of Concept demonstrates how the product's differentially private algorithm, called SafeTab-P, determines the amount of data each tribe or village will receive based on population size

and geography level while ensuring sufficient confidentiality protections.

Detailed Demographic and Housing Characteristics File A (Detailed DHC–A)

- *Subjects:* Population counts and sex by age statistics for approximately 370 detailed racial and ethnic groups, such as German, Lebanese, Jamaican, Chinese, Native Hawaiian, and Mexican, as well as about 1,200 detailed American Indian and Alaska Native tribal and village population groups, such as Native Village of Hooper Bay (Naparyarmiut) and Navajo Nation.
- The Detailed DHC–A uses a design that determines the amount of data tribes and villages will receive based on group size and geography level. This design will use minimum population counts to determine eligibility for a total population count table and an age by sex table. The 2010 AIANSF used a single population threshold of 100 for every table in every geographic area (2010 AIANSF technical documentation page 1–1). The proposed thresholds for the 2020 Detailed DHC–A product are determined dynamically and are all less than 100 in the Proof of Concept product.
- *Access: data.census.gov.*
- *Geographies:* Nation, state, county, American Indian/Alaska Native/Native Hawaiian (AIANNH) areas, place (cities and towns) and census tract.
- *Planned release date:* August 2023.

Detailed Demographic and Housing Characteristics File (Detailed DHC–B)

- *Subjects:* Household type and tenure (*i.e.,* owner- or renter-occupied) for the same detailed race and ethnicity groups and American Indian and Alaska Native tribal and village population groups mentioned for the Detailed DHC–A.
- The Detailed DHC–B has a proposed design similar to the Detailed DHC–A.
- *Access: data.census.gov.*
- *Geographies:* Nation, state, county, American Indian/Alaska Native/Native Hawaiian (AIANNH) areas, place (cities and towns) and census tract.
- *Planned release date:* To be determined.

Submit your comments by email by March 2, 2023. Send comments to: *2020DAS@census.gov* with the subject ''2020 Census Detailed DHC–A.''

Robert L. Santos, Director, Census Bureau, approved the publication of this notification in the **Federal Register**.

Dated: January 13, 2023.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2023–01083 Filed 1–19–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–848]

Emulsion Styrene-Butadiene Rubber From Mexico: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Industrias Negromex S.A. de C.V. (Negromex) did not make sales of emulsion styrene-butadiene rubber (ESB rubber) from Mexico at less than normal value during the period of review (POR), September 1, 2020, through August 31, 2021.

DATES: Applicable January 20, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] No interested party submitted comments on the *Preliminary Results.* Accordingly, the final results remain unchanged from the *Preliminary Results.* Commerce conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [2]

The merchandise covered by the *Order* is cold-polymerized emulsion styrene-butadiene rubber. For a complete description of the scope of the *Order, see* the *Preliminary Results.*

Final Results of Review

We determine that the following weighted-average dumping margin exists for the respondent for the POR, September 1, 2020, through August 31, 2021:

Exporter/producer	Weighted-average dumping margin (percent)
Industrias Negromex S.A. de C.V	0.00

Disclosure

Because Commerce received no comments on the *Preliminary Results,* we have not modified our analysis and no decision memorandum accompanies this **Federal Register** notice. We are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For Negromex, because its weighted-average dumping margin is zero, we will instruct CBP to liquidate entries reported in this review without regard to antidumping duties. Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Negromex for which it did not know its merchandise was destined for the United States, 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.[3]

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective for all shipments of subject merchandise entered, or

[1] *See Emulsion Styrene-Butadiene Rubber from Mexico: Preliminary Results of the Antidumping Duty Administrative Review; 2020–2021,* 87 FR 59050 (September 29, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Antidumping Duty Orders,* 82 FR 42790 (September 12, 2017) (*Order*).

[3] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

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 Negromex will be zero; (2) for merchandise exported by a producer or exporter not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding; (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 has been covered in a prior completed segment of this proceeding, the cash deposit rate will be the company-specific rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 19.52 percent,[4] the all-others rate established in the LTFV investigation. 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 this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

[4] *See Order,* 82 FR at 42791.

Dated: January 12, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–01041 Filed 1–19–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting; United States Investment Advisory Council

AGENCY: SelectUSA, International Trade Administration, Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), this notice announces, the United States Investment Advisory Council (IAC) will hold a public meeting on February 14, 2023. In August 2022, U.S. Secretary of Commerce Gina M. Raimondo appointed a new cohort of members to serve two-year terms. Members of this cohort will meet for the second time to continue to discuss matters related to foreign direct investment (FDI) in the United States and the programs and policies to promote and retain such investments across the country.

DATES: Tuesday, February 14, 2023, 1:30 p.m.–3:00 p.m. ET.

ADDRESSES: The meeting will be held virtually via WebEx. Please note that registration is required both to attend the meeting and to make a statement during the public comment portion of the meeting. Please limit comments to five minutes or less and submit a brief statement summarizing your comments to: *IAC@trade.gov* or United States Investment Advisory Council, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 30011, Washington, DC 20230. The deadline for members of the public to register, including requests to make comments during the meeting, or to submit written comments for dissemination prior to the meeting is 5:00 p.m. ET on February 7, 2023. Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Claire Pillsbury, SelectUSA, Room 30037, 1401 Constitution Avenue NW, Washington, DC 20230, phone: 202–578–8239, email: *IAC@trade.gov.*

SUPPLEMENTARY INFORMATION: The IAC was established under the discretionary authority of the Secretary of Commerce (Secretary) and in accordance with the Federal Advisory Committee Act (5 U.S.C. app.).

The IAC advises the Secretary on matters relating to the promotion and retention of foreign direct investment in the United States. At the meeting, the IAC members will discuss work done within the three subcommittees: Economic Competitiveness, Workforce, and SelectUSA 2.0. The final agenda will be posted on the Department of Commerce website for the IAC at: *https://www.trade.gov/selectusa-investment-advisory-council,* prior to the meeting.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **ADDRESSES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker and a brief statement summarizing the comments. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers.

Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. ET on February 7, 2023, for inclusion in the meeting records and for circulation to the Members of the IAC.

In addition, any member of the public may submit pertinent written comments concerning the IAC's affairs at any time before or after the meeting. Comments may be submitted to Rachel David at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. ET on February 7, 2023, to ensure transmission to the IAC members prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered during the meeting.

Comments and statements will be posted on the IAC website (*https://www.trade.gov/selectusa-investment-advisory-council*) without change, including any business or personal information provided such as it includes names, addresses, email

addresses, or telephone numbers. All comments and statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available.

Copies of the meeting minutes will be available within 90 days of the meeting date.

Jasjit Singh,

Executive Director, SelectUSA.

[FR Doc. 2023–01081 Filed 1–19–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–977, C–570–978]

High Pressure Steel Cylinders From the People's Republic of China: Final Results of Sunset Reviews and Revocation of Orders

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

SUMMARY: On November 1, 2022, the U.S. Department of Commerce (Commerce) initiated the second sunset reviews of the antidumping duty (AD) and countervailing duty (CVD) orders on high pressure steel cylinders (HPSC) from the People's Republic of China (China). Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, consistent with the Tariff Act of 1930, as amended (the Act), Commerce is revoking the AD and CVD orders on HPSC from China.

DATES: Applicable January 20, 2023.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, 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) 482–1785.

SUPPLEMENTARY INFORMATION:

Background

On June 21, 2012, Commerce issued the AD and CVD orders on HPSC from China.[1] On December 5, 2017, Commerce published the most recent continuation of the *Orders.*[2] On November 1, 2022, Commerce initiated the current sunset reviews of the *Orders* pursuant to section 751(c) of the Act.[3]

We did not receive a timely notice to participate in these sunset reviews from any domestic interested party, pursuant to 19 CFR 351.218(d)(1)(i). As a result, consistent with 19 CFR 351.218(d)(1)(iii)(B)(1), Commerce ''{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 pursuant to 19 CFR 351.218(d)(1)(iii)(B)(2).[4]

Scope of the Orders

The merchandise covered by the scope of the *Orders* is seamless steel cylinders designed for storage or transport of compressed or liquefied gas (high pressure steel cylinders). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration (DOT)-approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT–E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by the *Order* have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings.

Excluded from the scope of the *Order* are high pressure steel cylinders manufactured to UN–ISO–9809–1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the *Order* are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

Merchandise covered by the *Order* is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7311.00.00.30. Subject merchandise may also enter under HTSUS subheadings 7311.00.00.60 or 7311.00.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the *Order* is dispositive.

Revocation

Pursuant to section 751(c)(3)(A) of the Act, ''{i}f no interested party responds to the notice of initiation . . . {Commerce} shall issue a final determination . . . revoking the order.'' Because no domestic interested parties responded to the notice of initiation in these segments of the proceeding, 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 these *Orders* entered, or withdrawn from the warehouse, on or after December 5, 2022, the fifth anniversary of the date of publication of the last continuation notice.[5] Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and AD and CVD deposit requirements. Commerce may 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 this notice in accordance with sections 751(c) and 777(i)(1) of the Act, and 19 CFR 351.218(f)(4) and 351.222(i)(1)(i).

Dated: January 13, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–01084 Filed 1–19–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See High Pressure Steel Cylinders from the People's Republic of China: Antidumping Duty Order,* 77 FR 37377 (June 21, 2012); and *High Pressure Steel Cylinders from the People's Republic of China: Countervailing Duty Order,* 77 FR 37384 (June 21, 2012) (collectively, *Orders*).

[2] *See High Pressure Steel Cylinders from the People's Republic of China: Continuation of Antidumping Duty and Countervailing Duty Orders,* 82 FR 57427 (December 5, 2017) (*2017 Continuation Notice*).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 65746 (November 1, 2022).

[4] *See* Commerce's Letter, ''Sunset Reviews Initiated on November 1, 2022,'' dated November 25, 2022.

[5] *See 2017 Continuation Notice,* 82 FR at 57428.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–843]

Prestressed Concrete Steel Wire Strand From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Celik Halat ve Tel Sanayi A.S. (Celik Halat), a producer/exporter of prestressed concrete steel wire strand (PC strand) from the Republic of Turkey (Turkey) and sole respondent for this administrative review, received countervailable subsidies during the period of review (POR), September 21, 2020, through December 31, 2021.

DATES: Applicable January 20, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 2022, Commerce published the *Preliminary Results* and invited interested parties to comment.[1] No interested party submitted comments on the *Preliminary Results.* Accordingly, the final results remain unchanged from the *Preliminary Results.* Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [2]

The merchandise covered by this *Order* is PC strand, produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. For a complete description of the scope of the *Order, see* the *Preliminary Results.*

Final Results of Review

Commerce determines the following net countervailable subsidy rate exists for the respondent for the POR,[3] September 21, 2020, through December 31, 2021:

Company	Subsidy rate (percent *ad valorem*)
Celik Halat ve Tel Sanayi A.S.[4]	96.33

Disclosure

Because Commerce received no comments on the *Preliminary Results,* we have not modified our analysis and no decision memorandum accompanies this **Federal Register** notice. We are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue 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

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown for the company listed above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, Commerce will instruct CBP to continue to collect cash deposits at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: January 12, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–01085 Filed 1–19–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review,* 87 FR 66650 (November 4, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Countervailing Duty Order,* 86 FR 7990 (February 3, 2021) (*Order*).

[3] Commerce inadvertently listed the beginning of the POR as September 9, 2020, instead of September 21, 2020, in the *Preliminary Results.* The correct POR is September 21, 2020, through December 31, 2021.

[4] Commerce found the following companies to be cross-owned with Celik Halat: Dogan Sirketler Grubu Holding A.S.; and Adilbey Holding A.S.

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 230103–0001]

RIN 0660–XC052

Privacy, Equity, and Civil Rights Request for Comment

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice, request for comment.

SUMMARY: The National Telecommunications and Information Administration (NTIA) requests comments addressing issues at the intersection of privacy, equity, and civil rights. The comments, along with information gathered through the three listening sessions that NTIA held on this topic, will inform a report on whether and how commercial data practices can lead to disparate impacts and outcomes for marginalized or disadvantaged communities.

DATES: Written comments must be received on or before 11:59 p.m. Eastern Time on March 6, 2023.

ADDRESSES: All electronic public comments on this action, identified by

Regulations.gov docket number NTIA–2023–0001, may be submitted through the Federal e-Rulemaking Portal at *www.regulations.gov.* The docket established for this rulemaking can be found at *www.regulations.gov,* NTIA–2023–0001. Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Responders should include a page number on each page of their submissions. Please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. All comments received are a part of the public record and will generally be posted to *Regulations.gov* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. For more detailed instructions about submitting comments, see the ''Instructions for Commenters'' section at the end of this Notice.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this Notice to *thall@ntia.gov* with ''Privacy, Equity, and Civil Rights Request for Comment'' in the subject line, or if by mail, addressed to Travis Hall, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone: (202) 482–3522. Please direct media inquiries to NTIA's Office of Public Affairs, telephone: (202) 482–7002; email: *press@ntia.gov.*

SUPPLEMENTARY INFORMATION: *Background and Authority:* The National Telecommunications and Information Administration (NTIA) is the President's principal advisor on telecommunications and information policy issues. In this role, NTIA studies and develops policy on the impact of technology and the internet on privacy. This includes examining the extent to which modern data practices and business models are adequately addressed by the current U.S. privacy protection framework. For example, NTIA helped draft the 2012 ''Consumer Privacy Bill of Rights'' [1] and the 2014 ''Big Data: Seizing Opportunities, Preserving Values'' [2] report, and led the 2018 Consumer Privacy Request for Comment.[3] Recently, NTIA filed comments in response to the Federal Trade Commission's (FTC) Advance Notice of Proposed Rulemaking on Commercial Surveillance and Data Security, supporting the rulemaking and recommending that the FTC adopt strong, comprehensive privacy rules, consider heightened privacy protections for marginalized communities, and address discriminatory algorithmic decision-making.[4]

NTIA has long acknowledged that the contexts of information collection, disclosure, and use are key considerations for privacy policy, and that privacy cannot be reduced to a strict divide of exposure contrasted with secrecy. A vital component of contextual analysis, and one that requires greater attention by policy-makers, is the relative social and economic status of the individual or community subject to commercial data flows. Scholarship has shown that marginalized or underserved communities are especially at risk of privacy violations.[5] This work has demonstrated that not only are these communities often materially disadvantaged regarding to the effort required to adequately manage privacy controls, they are often at increased risk of privacy losses or data misuse.[6] Given the real and promised benefits of the digital economy, it is vital that access to digital services not be predicated on increased risk to marginalized and disadvantaged communities, or practices that may undermine trust and therefore adoption.

The Biden Administration has highlighted a national imperative to promote equity and increase support for communities and individuals who have been ''historically underserved, marginalized, and adversely affected by persistent poverty and inequality.'' [7] As stated in Executive Order 14035 on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government:* ''[e]ntrenched disparities in our laws and public policies, and in our public and private institutions, have often denied . . . equal opportunity to individuals and communities.'' [8] These observations and the vital need to address them are deeply relevant to modern data collection and processing. In October 2022, the White House Office of Science and Technology Policy released the Blueprint for an AI Bill of Rights identifying ''five principles that should guide the design, use, and deployment of automated systems to protect the American public in the age of artificial intelligence,'' including ''Algorithmic Discrimination Protections'' and ''Data Privacy.'' [9] The Administration's Principles for Enhancing Competition and Tech Platform Accountability document highlights the imperative to

[1] White House, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Economy,* (Feb. 2012), *https://obamawhitehouse.archives.gov/sites/default/files/privacy-final.pdf.*

[2] White House, *Big Data: Seizing Opportunities, Preserving Values,* (May 2014), *https://obamawhitehouse.archives.gov/sites/default/files/docs/big_data_privacy_report_may_1_2014.pdf.*

[3] National Telecommunications & Information Administration, *Request for Comments on Developing the Administration's Approach to Consumer Privacy* (Sept. 25, 2018), *https://www.ntia.doc.gov/federal-register-notice/2018/request-comments-developing-administration-s-approach-consumer-privacy.*

[4] National Telecommunications and Information Administration ANPR Comment (Nov. 21, 2022), *https://www.ntia.doc.gov/files/ntia/publications/ftc_commercial_surveillance_anpr_ntia_comment_final.pdf.*

The FTC recently solicited comments on the possibility of promulgating rules to govern commercial surveillance and data security, partly in response to President Biden's request that the agency initiate rulemakings in areas such as ''unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy.'' Promoting Competition in the American Economy, Exec. Order No. 14036, 86 FR 36987, Section (r)(iii) (July 9, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-07-14/pdf/2021-15069.pdf.*

[5] Danielle Keats-Citron, *Cyber Civil Rights,* 89 B.U.L. Rev. 61 (2008); Khiara Bridges, *The Poverty of Privacy Rights,* Stanford University Press (2017); Mary Madden et al., *Privacy, Poverty, and Big Data: A Matrix Of Vulnerabilities For Poor Americans,* 95 Wash. U.L. Rev. 53 (2017); Alvaro Bedoya, *Privacy As Civil Right,* 50 N.M.L. Rev. 301 (2020); Scott Skinner-Thompson, *Privacy At The Margins,* Cambridge University Press (2020); Sara Sternberg Greene, *Stealing (Identity) From The Poor,* 106 Minn. L. Rev. 59 (2021); Michele Gilman, *Feminism, Privacy, And Law In Cyberspace,* in Oxford Handbook of Feminism and Law in the United States, (Deborah Brake, Martha Chamallas, & Verna Williams eds., 2021); Anita Allen, *Dismantling the ''Black Opticon'': Privacy, Race, Equity, and Online Data-Protection Reform,* 131 Yale L.J.F. 907, 910 (Feb. 20, 2022) (''In pursuit of equitable data privacy, American lawmakers should focus on the experiences of marginalized populations no less than privileged populations'').

[6] *Id. See, e.g.,* Laura Moy, *A Taxonomy of Policing Technology's Racial Inequity Problems,* 2021 U. Ill. L. Rev. 139, 185–191 (illustrating how the use of automated employment recruiting tools and automated personalized learning programs for K–12 students can create, reify, and obscure racial inequity); Greene, *supra* note 5 (citing Department of Justice and other data showing high rates of identity theft among low-income individuals, and discussing the severity of the ensuing harms for low-income people in particular); Danielle Citron & Daniel Solove, *Privacy Harms,* 102 B.U.L. Rev. 793, 856 (2021) (''The misuse of personal data can be particularly costly to women, sexual and gender minorities, and non-White people given the prevalence of destructive stereotypes and the disproportionate surveillance of women and marginalized communities in their intimate lives.''); *id.* at 857 (''A key aspect of discrimination harms is the unequal frequency, extensiveness, and impact of privacy violations on marginalized people.'').

[7] Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Exec. Order No. 13985, 86 FR 7009 (Jan. 20, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf.*

[8] *Id.*

[9] White House Office of Science and Technology Policy, *Blueprint for an AI Bill of Rights* (Oct. 2022), *https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf.*

''stop discriminatory algorithmic decision-making'' and ''restrict excessive data collection and targeted advertising to young people,'' priorities President Biden also emphasized in his 2022 State of the Union address.[10] President Biden requested that the Federal Trade Commission consider exploring new avenues of protecting the information of consumers seeking reproductive care, and that the Department of Health and Human Services examine how to better protect sensitive information related to reproductive care.[11] This Request for Comment is intended to examine the persistence of discriminatory disparities in the digital economy, and the extent to which the collection, processing, sharing, and use of data can lead to higher risks for some communities, exacerbate structural inequities, or contribute to their erosion.

On December 14–16, 2021, NTIA hosted three listening sessions on privacy, equity, and civil rights, with each session consisting of keynote speakers, a panel of experts, and an opportunity for the public to present their views. The data gathered through this process, along with responses to this Request for Comment, will be used to inform a report on whether and how commercial data practices can lead to disparate impacts for marginalized or disadvantaged communities.

The proliferation of cheap, efficient, and profitable data collection and processing has transformed how we identify, access, and obtain important life necessities and opportunities. Instead of perusing the local newspaper's classified section, a job seeker may now seek potential work opportunities through career-focused social networking sites,[12] or be targeted with digital ads for specific opportunities. Smartphone apps have become vehicles for banking, dating, accessing public benefits, and obtaining medical information, among other key societal functions. But even as these new modes of engaging with the world can reduce barriers, they can also calcify old forms of discrimination and introduce new ones.[13] Digital ads for some employment opportunities may be targeted based on real or perceived demographic characteristics such as age, sex, or race, and reach certain groups while ignoring others.[14] Even when digital advertisers do not intend to use discriminatory targeting criteria, the datasets they use may reflect current or historic inequities and the algorithms they use may unintentionally replicate those biases or others—such as untargeted ads for certain types of jobs being delivered disproportionately to men or women.[15] An app that collects and sells location data could reveal facts about the app user's movements and life that could make them vulnerable to discrimination, such as an LGBTQ+-specific dating app or a Muslim prayer app.[16] These examples demonstrate how debates about consumer privacy necessarily implicate questions about civil rights as the proliferation of tracking, collection, and evaluation technologies enables new forms of profiling, redlining, and exclusion.[17]

Commenters during NTIA's listening sessions raised concerns that data collection and processing can disproportionately harm marginalized and historically excluded communities, such as disabled people;[18] Native or Indigenous people; people of color, including but not limited to Black people, Asian-Americans and Pacific Islanders, and Hispanic or Latinx people; LGBTQ people; women; victims of domestic violence (including intimate partner violence, abuse by a caretaker, and other forms of domestic abuse); religious minorities; victims of online harassment; formerly incarcerated persons; immigrants and undocumented people; people whose primary language is not among the most commonly spoken languages in the United States; children and adolescents; students; low-income people; people who receive public benefits; unhoused people; sex workers, hourly workers, ''gig'' or contract workers, and other kinds of workers; and other communities or individuals who are vulnerable to exploitation, or have historically been subjected to discrimination.[19]

[10] The White House, *Readout of White House Listening Session on Tech Platform Accountability* (Sept. 8, 2022), *https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/08/readout-of-white-house-listeningsession-on-tech-platform-accountability;* President Joe Biden, *2022 State of The Union Address* (Mar. 1, 2022), *https://www.whitehouse.gov/state-of-the-union-2022.*

[11] Protecting Access to Reproductive Healthcare Services, Exec. Order No. 14076, 87 FR 42053 (July 13, 2022), *https://www.govinfo.gov/content/pkg/FR-2022-07-13/pdf/2022-15138.pdf.*

[12] Miranda Bogen & Aaron Rieke, *Help Wanted: An Examination of Hiring Algorithms, Equity, and Bias,* Upturn, at 5 (Dec. 10, 2018), *https://www.upturn.org/work/help-wanted/* (describing the development of internet job boards).

[13] This Request for Comment discusses related but distinct terms of art. ''Disparate impact'' refers to facially neutral practices that produce discriminatory outcomes for certain groups, while ''disparate treatment'' involves discriminatory intent coupled with a discriminatory outcome. Disparate outcomes may or may not constitute discrimination on the basis of certain attributes. Civil rights laws confer protected class status on certain attributes, such as race, gender, sexual orientation, or national origin.

[14] Jeremy B. Merrill, *Google Has Been Allowing Advertisers to Exclude Nonbinary People from Seeing Job Ads,* The Markup (Feb. 11, 2021), *https://themarkup.org/google-the-giant/2021/02/11/google-has-been-allowing-advertisers-to-exclude-nonbinary-people-from-seeing-job-ads;* Moy, *supra* note 6, at 186–88; Julia Angwin & Terry Parris, Jr., *Facebook Lets Advertisers Exclude Users by Race,* ProPublica (Oct. 28, 2016), *https://www.propublica.org/article/facebook-lets-advertisers-exclude-users-by-race;* Julia Angwin et al., *Facebook (Still) Letting Housing Advertisers Exclude Users by Race,* ProPublica (Nov. 21, 2017). *https://www.propublica.org/article/facebook-advertising-discrimination-housing-race-sex-national-origin;* Ava Kaufman & Ariana Tobin, *Facebook Ads Can Still Discriminate Against Women and Older Workers, Despite a Civil Rights Settlement,* ProPublica (Dec. 13, 2019), *https://www.propublica.org/article/facebook-ads-can-still-discriminate-against-women-and-older-workers-despite-a-civil-rights-settlement;* Jon Keegan, *Facebook Got Rid of Racial Ad Categories. Or Did It?,* The Markup (July 9, 2021), *https://themarkup.org/citizen-browser/2021/07/09/facebook-got-rid-of-racial-ad-categories-or-did-it.*

[15] Latanya Sweeny, *Discrimination in Online Ad Delivery,* 11 ACM Queue 3, 10–29 (2013), *https://queue.acm.org/detail.cfm?id=2460278* (finding skewed ad delivery on racial and gender lines of ads for employment and housing opportunities on Facebook, despite neutral targeting parameters); Basileal Imana et al., *Auditing for Discrimination in Algorithms Delivering Job Ads,* World Wide Web Conference '21 (April 2021), *https://dl.acm.org/doi/pdf/10.1145/3442381.3450077* (replicating prior findings that ads for employment opportunities on Facebook can be delivered on a skewed demographic basis despite neutral targeting criteria, and identifying the advertiser's choice of advertising objective and choices made by the ad platform regarding ad delivery optimization as additional factors causing the skew); Jinyan Zhang, *Solving the problem of racially discriminatory advertising on Facebook,* Brookings Institution (Oct. 19, 2021), *https://www.brookings.edu/research/solving-the-problem-of-racially-discriminatory-advertising-on-facebook/* (summarizing literature and replicating similar findings).

[16] Jon Keegan & Alfred Ng, *Gay/Bi Dating App, Muslim Prayer Apps Sold Data on People's Location to a Controversial Data Broker,* The Markup (Jan. 27, 2022), *https://themarkup.org/privacy/2022/01/27/gay-bi-dating-app-muslim-prayer-apps-sold-data-on-peoples-location-to-a-controversial-data-broker.*

[17] *See, e.g.,* Federal Trade Commission, *A Look at What ISPs Know About You: Examining the Privacy Practices of Six Major Internet Service Providers* 47 (Oct. 21, 2021), *https://www.ftc.gov/system/files/documents/reports/look-what-isps-know-about-you-examining-privacy-practices-six-major-Internet-service-providers/p195402_isp_6b_staff_report.pdf* (describing how six surveyed internet service providers collect and use race and ethnicity data; detailing ensuing concerns about potentially discriminatory practices; and situating those concerns in previous digital redlining tactics).

[18] We refer both to ''people with disabilities'' and ''disabled people'' throughout this document to reflect the usage of both person-first and identity-first language. *See generally,* National Center on Disability and Journalism, *Disability Language Style Guide,* ''Disabled people/people with disabilities,'' *https://ncdj.org/style-guide/#disabledpeople;* Research & Training Center on Independent Living, *Acceptable Language Options: A Partial Glossary of Disability Terms, https://rtcil.org/guidelines#Acceptable* (describing and distinguishing person-first and identity-first language).

[19] In discussing the disparate impact of privacy invasions on marginalized communities, we are also conscious of this pertinent reminder from Federal Trade Commissioner Alvaro Bedoya:

The listening sessions examined many different components of how data collection and processing can disproportionately harm marginalized or underserved communities. Certain data practices have the potential to replicate and exacerbate existing forms of discrimination. For example, loose oversight of digital marketing policies allowed payday lenders and associated lead generation companies to target low-income communities of color, replicating discriminatory predation that the payday loan industry has long engaged in offline.[20] Members of specific marginalized groups may also be more likely to be subjected to a privacy harm—for example, women, girls, and members of the LGBTQ community experience invasions of sexual privacy at greater rates than do other communities.[21] Marginalized individuals can also experience privacy invasions more severely. For example, privacy invasions such as data breaches and identity theft can be universally costly and time-consuming to address, guard against, and seek justice for. But pursuing redress is often particularly burdensome for low-income victims, and the lack of a financial safety net can make the theft more impactful.[22] Finally, the intersectional nature of marginalized identities—*i.e.,* the fact that many individuals have multiple marginalized identities, such as their race or gender, which concurrently affect how they are perceived and treated—compels careful attention to those complexities.[23]

The implications of modern data practices for privacy and civil rights also compel interrogation of the efficacy of legal privacy and civil rights protections. For example, the Health Insurance Portability and Accountability Act's (HIPAA) privacy protections only extend to personally identifiable health information collected by certain categories of entities,[24] which leaves health information that fails to fit that precise description—such as information collected by certain fitness and health apps—without specific protections, despite its sensitivity and inherent potential for abuse.[25] This can create specific risks for workers vulnerable to discrimination based on conditions such as pregnancy or disability.

Other components of the modern digital economy have discriminatory implications that existing civil rights laws do not appear to prevent or address. For example, public accommodations statutes do not always extend to key online spaces such as social networking or gaming sites, meaning that operators of those spaces are not always legally compelled to make their websites accessible to users with disabilities.[26] websites that are difficult to use, or simply unusable, for users with disabilities prevent those users from accessing information or opportunities in an internet-dependent world.[27]

The listening sessions also addressed solutions to these difficult problems. Panelists and attendees suggested a range of strategies, such as firmer restrictions on risky data collection and

''When we talk about the disparate impact of surveillance, we have to be careful. We must not reinforce the idea that the targets of surveillance are helpless victims. Often, in fact, the ''other'' is being watched precisely because they are fighting back. And sometimes, they win—and that watching fails and is utterly useless.'' Alvaro Bedoya, *Privacy As Civil Right,* 50 N.M.L. Rev. 301, 309 (2020).

[20] Upturn, *Led Astray: Online Lead Generation and Payday Loans* (Oct. 2015), *https://www.upturn.org/static/reports/2015/led-astray/files/Upturn_-_Led_Astray_v.1.01.pdf* (describing digital ads placed by payday lenders and lead generation companies for exploitative loans—including in jurisdictions where such ads are illegal—despite policies by online platforms ostensibly prohibiting such ads); David Dayen, *Google Said It Would Ban All Payday Loan Ads. It Didn't,* The Intercept (Oct. 7, 2016), *https://theintercept.com/2016/10/07/google-said-it-would-ban-all-payday-loan-ads-it-didnt;* Jim Hawkins & Tiffany Penner, *Advertising Injustice: Marketing Race and Credit in America,* 70 Emory L.J. 1619, 1624–5 (2021), *https://scholarlycommons.law.emory.edu/elj/vol70/iss7/7/* (finding that in two studies of such lenders in the Houston, Texas area, lenders for generally exploitative loan products such as payday loans and auto title loans marketed predominantly to Black and Latino potential customers, while ''mainstream'' banks predominantly marketed to white potential customers).

[21] Danielle Citron, *Sexual Privacy,* 128 Yale L.J. 1870, 1908–09 (2019).

[22] Greene, *supra* note 5, at 5–7.

[23] Katy Steinmetz, *Kimberlé Crenshaw on What Intersectionality Means Today,* Time (Feb. 20, 2020), *https://time.com/5786710/kimberle-crenshaw-intersectionality* (''We tend to talk about race inequality as separate from inequality based on gender, class, sexuality or immigrant status. What's often missing is how some people are subject to all of these, and the experience is not just the sum of its parts.''); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,* 1989 U. Chi. Legal F. 139, 149 (1989) (''The point is that Black women can experience discrimination in any number of ways and that the contradiction arises from our assumptions that their claims of exclusion must be unidirectional. Consider an analogy to traffic in an intersection, coming and going in all four directions. Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another. If an accident happens in an intersection, it can be caused by cars traveling from any number of directions and, sometimes, from all of them. Similarly, if a Black woman is harmed because she is in the intersection, her injury could result from sex discrimination or race discrimination.''); Michele Gilman, *The Class Differential in Privacy Law,* 77 Brooklyn L. Rev. 1389, 1394 (2012) (''The class differential in privacy law results from complex interactions between class, race, and gender. Because poor Americans are disproportionately minority and female, it is impossible to talk about class without taking into account how subordination is linked to race and gender'').

[24] Department of Health and Human Services, *The HIPAA Privacy Rule, https://www.hhs.gov/hipaa/for-professionals/privacy/index.html.*

[25] *See, e.g.,* Drew Harwell, *Is your pregnancy app sharing your intimate data with your boss?,* The Washington Post (April 10, 2019), *https://www.washingtonpost.com/technology/2019/04/10/tracking-your-pregnancy-an-app-may-be-more-public-than-you-think;* Stephanie O'Neill, *As Insurers Offer Discounts for Fitness Trackers, Wearers Should Step With Caution,* NPR (Nov. 19, 2018), *https://www.npr.org/sections/health-shots/2018/11/19/668266197/as-insurers-offer-discounts-for-fitness-trackers-wearers-should-step-with-cautio.*

The privacy implications of non-health data from which sensitive health information can be inferred, such as the location data of an app user who visits an abortion clinic or dialysis center, are also concerning. *See, e.g.,* Stuart A. Thompson & Charlie Warzel, *Twelve Million Smartphones, One Dataset, Zero Privacy,* The New York Times (Dec. 19, 2019), *https://www.nytimes.com/interactive/2019/12/19/opinion/location-tracking-cell-phone.html* (review of dataset from a location data aggregator included ''hundreds of pings in mosques and churches, abortion clinics, queer spaces and other sensitive areas.''); Joseph Cox, *Data Broker is Selling Location Data of People Who Visit Abortion Clinics,* Vice (May 3, 2022), *https://www.vice.com/en/article/m7vzjb/location-data-abortion-clinics-safegraph-planned-parenthood* (''It costs just over $160 to get a week's worth of data on where people who visited Planned Parenthood came from, and where they went afterwards.''); Joseph Cox, *Location Data Firm Provides Heat Maps of Where Abortion Clinic Visitors Live,* Vice (May 5, 2022), *https://www.vice.com/en/article/g5qaq3/location-data-firm-heat-maps-planned-parenthood-abortion-clinics-placer-ai.*

[26] David Brody & Sean Bickford, *Discriminatory Denial of Service,* Lawyers' Committee For Civil Rights Under Law (Jan. 2020), *https://lawyerscommittee.org/wp-content/uploads/2019/12/Online-Public-Accommodations-Report.pdf* (finding a range of approaches to how states consider online spaces, with 28 states where coverage is unclear, coverage is unlikely, online sites are explicitly not covered, or lack a state anti-discrimination law altogether); Amanda Beane et al., *Eleventh Circuit Vacates Ruling That Websites Are Not Public Accommodations Under the ADA,* Consumer Protection Review (Jan. 18, 2022), *https://www.consumerprotectionreview.com/2022/01/eleventh-circuit-vacates-ruling-that-websites-are-not-public-accommodations-under-the-ada* (describing the ambiguity of whether websites constitute places of public accommodations under the ADA).

[27] *See, e.g.,* Rachel Lerman, *Social media has upped its accessibility game. But deaf creators say it has a long way to go,* The Washington Post (Mar. 15, 2021), *https://www.washingtonpost.com/technology/2021/03/15/social-media-accessibility-captions;* April Glaser, *Blind people, advocates slam company claiming to make websites ADA compliant,* NBC News (May 9, 2021), *https://www.nbcnews.com/tech/innovation/blind-people-advocates-slam-company-claiming-make-websites-ada-compliant-n1266720;* Sarah Katz, *Twitter Just Rolled Out a Feature That's Inaccessible to Disabled Users,* Slate, *https://slate.com/technology/2020/06/twitter-voice-tweets-accessibility.html;* Blake Reid, *Internet Architecture and Disability,* 95 Ind. L.J. 591, 593 (May 2020), (''[S]hortcomings in internet accessibility threaten to deny millions of Americans access to the economic, educational, cultural, and democratic life of the twenty-first century'').

processing activities; more meaningful penalties for data abuses; more impactful remedies for victims; and certain kinds of third-party audits for algorithms that use particular categories of data or algorithms that will be deployed in specific contexts. Participants argued that proposals should also account for how data may also be used to reduce discriminatory harms, such as monitoring for or preventing biased outcomes, and connecting marginalized communities to public services.

Instructions for Commenters

In this Request for Comment, we hope to gather information on the intersection of privacy, equity, and civil rights to supplement the information gathered in the listening sessions. Specifically, we seek to gather feedback on how the processing of personal information by private entities creates, exacerbates, or alleviates disproportionate harms for marginalized and historically excluded communities; to explore possible gaps in applicable privacy and civil rights laws; and to identify ways to prevent and deter harmful behavior, address harmful impacts, and remedy any gaps in existing law. We welcome answers to any of the below questions, in whole or in part, as well as input on related issues not specifically addressed in the questions. We also welcome reactions to information we heard at the three listening sessions held in December. Written comments may include references to personal experiences; white papers and reports; legal, historical, sociological, technical, and interdisciplinary scholarship; empirical or qualitative analysis; and any other form of information that commenters deem pertinent to our review.

When responding to one or more of the questions below, please note in the text of your response the number of the question to which you are responding.

NTIA seeks public comment on the following questions:

Questions

Framing

1. How should regulators, legislators, and other stakeholders approach the civil rights and equity implications of commercial data collection and processing?

a. Is ''privacy'' the right term for discussing these issues? Is it under-inclusive? Are there more comprehensive terms or conceptual frameworks to consider?

b. To what degree are individuals sufficiently capable of assessing and mitigating the potential harms that can arise from commercial data practices, given current information and privacy tools? What value could additional transparency requirements or additional privacy controls provide; what are examples of such requirements or controls; and what are some examples of their limitations?

c. How should discussions of privacy and fairness in automated decision-making approach the concepts of ''sensitive'' information and ''non-sensitive'' information, and the different kinds of privacy harms made possible by each?

d. Some privacy experts have argued that the collective implications of privacy protections and invasions are under-appreciated.[28] Strong privacy protections for individuals benefit communities by enabling a creative and innovative democratic society, and privacy invasions can damage communities as well as individuals. What's more, many categories of extractive and profitable processing rely on inferences about populations and demographic groups, making a collective understanding of privacy highly relevant.[29] How should the individual and collective natures of privacy be understood, both in terms of the value of privacy protections; the harms of privacy invasions; and the implications of those values and harms for underserved or marginalized communities?

e. How should proposals designed to improve privacy protections and mitigate the disproportionate harms of privacy invasions on marginalized communities address the privacy implications of publicly accessible information?

f. What is the interplay between privacy harms and other harms that can result from automated decision-making, such as discriminatory or arbitrary outcomes? How should these two issues be understood in relation to one another in the context of equity and civil rights concerns?

g. Civil rights experts and automated decision-making experts have raised concerns about the incongruity between intent requirements in civil rights laws and how automated systems can produce discriminatory outcomes without the intentional guidance of a programmer.[30] How should regulators, legislators, and other stakeholders think about the differences between intentional discrimination and unintentional discrimination on the basis of protected characteristics, such as race or gender? How do data practices and privacy practices affect each?

Impact of Data Collection and Processing on Marginalized Groups

2. Are there specific examples of how commercial data collection and processing practices may negatively affect underserved or marginalized communities more frequently or more severely than other populations?

a. In particular, what are some examples of how such practices differently impact communities including but not limited to: disabled people; Native or Indigenous people; people of color, including but not limited to Black people, Asian-Americans and Pacific Islanders, and Hispanic or Latinx people; LGBTQ people; women; victims of domestic violence (including intimate partner violence, abuse by a caretaker, and other forms of domestic abuse); religious minorities; victims of online harassment; formerly incarcerated persons; immigrants and undocumented people; people whose primary language is not English; children and adolescents; students; low-income people; people who receive public benefits; unhoused people; sex workers, hourly workers, ''gig'' or contract workers, and other kinds of workers; or other individuals or communities who are vulnerable to exploitation, or have historically been subjected to discrimination?

b. In what ways do the specific circumstances of people with disabilities—such as the obligation to supply personal information to obtain public benefits or reasonable accommodations, the use of assistive technologies, or the incompatibility of digital services with a disability—create particular privacy interests or risks?

c. How do specific data collection and use practices potentially create or reinforce discriminatory obstacles for

[28] *See* Citron & Solove, *supra* note 6, at 21–22 (noting that ''[p]rivacy harms often involve injury not just to individuals but to society'' and citing theorization by Joel Reidenberg, Robert Post, Julie Cohen, and Paul Schwartz concerning the societal implications of privacy protections and invasions).

[29] Salome Viljoen, *A Relational Theory of Data Governance,* 131 Yale L.J. 573, 578 (2021), *https://www.yalelawjournal.org/pdf/131.2_Viljoen_1n12myx5.pdf* (''[T]he data-collection practices of the most powerful technology companies are aimed primarily at deriving (and producing) population-level insights regarding how data subjects relate to others, not individual insights specific to the data subject. These insights can then be applied to all individuals (not just the data subject) who share these population features. This population-level economic motivation matters conceptually for the legal regimes that regulate the activity of data collection and use; it requires revisiting long-held notions of why individuals have a legal interest in information about them and where such interests obtain.'').

[30] *See, e.g.,* Solon Barocas & Andrew Selbst, *Big Data's Disparate Impact,* 104 Calif. L. Rev. 671 (2014).

marginalized groups regarding access to key opportunities, such as employment, housing, education, healthcare, and access to credit?

3. Are there any contexts in which commercial data collection and processing occur that warrant particularly rigorous scrutiny for their potential to cause disproportionate harm or enable discrimination?

a. In what ways can disproportionate harm occur due to data collected or processed in the context of evaluation for credit; healthcare; employment or evaluation for potential employment (please include consideration of temporary employment contexts such as so-called ''gig'' or contract workers); education, or in connection with evaluation for educational opportunities; housing, or evaluation for housing; insurance, or evaluation for insurance; or usage of or payment for utilities?

b. Are there particular technologies or classes of technologies that warrant particularly rigorous scrutiny for their potential to invade privacy and/or enable discrimination?

c. When should particular types of data be considered proxies for constitutionally-protected traits? For example, location data is frequently collected and used, but where someone lives can also closely align with race and ethnicity. In what circumstances should use of location data be considered intertwined with protected characteristics? Are there other types of data that present similar risks?

d. Does the internet offer new economic or social sectors that may raise novel discrimination concerns not directly analogous to brick-and-mortar commerce? For example, how should policymakers, users, companies, and other stakeholders think about civil rights, privacy, and equity in the context of online dating apps, streaming services, and online gaming communities?

e. In what ways can government uses of private data that is collected for commercial purposes—for example, through public-private partnerships—produce unintended or harmful outcomes? Are there ways in which these types of public-private partnerships implicate equity or civil rights concerns? What about the collection and sharing of consumer data by private actors for ''public safety purposes''?

f. What is the impact of consolidation in the tech and telecom sectors on consumer privacy as it relates to equity and civil rights concerns?

Existing Privacy and Civil Rights Laws

4. How do existing laws and regulations address the privacy harms experienced by underserved or marginalized groups? How should such laws and regulations address these harms?

a. With particular attention paid to equity considerations, what kinds of harms have been excluded from recognition or insufficiently prioritized in privacy law and policy?

b. To what extent do privacy and civil rights laws consider the effects of having multiple marginalized identities on a person's exposure to data abuses? How can privacy and civil rights laws incorporate an intersectional approach to privacy and civil rights protections?

c. Are existing privacy and civil rights laws being effectively enforced? If not, how should these deficiencies be remedied?

d. Are there situations where privacy law conflicts with efforts to ensure equity and protect civil rights for these communities? If so, how should those conflicts be addressed?

e. What resources or legal structures exist to identify and remedy wrongful outcomes produced by digital profiles or risk scores, particularly regarding individual or collective outcomes for underserved or marginalized communities?

f. Legislators around the country and across the globe have enacted or amended a number of laws intended to deter, prevent, and remedy privacy harms. Which, if any, of these laws might serve as useful models, either in whole or in part? Are there approaches to be avoided? How, if at all, do these laws address the privacy needs and vulnerabilities of underserved or marginalized communities?

g. Are there any privacy or civil rights laws, regulations, or guidance documents that demonstrate an exemplary approach to preventing or remedying privacy harms, particularly the harms that disproportionately impact marginalized or underserved communities? What are those laws, regulations, or guidance documents, and how might their approach be emulated more broadly?

h. What is the best way to collect and use information about race, sex, or other protected characteristics to identify and prevent potential bias or discrimination, or to specifically benefit marginalized communities? When should this occur, and what safeguards are necessary to prevent misuse?

Solutions

5. What are the principles that should guide the Administration in addressing disproportionate harms experienced by underserved or marginalized groups due to commercial data collection, processing, and sharing?

a. Are these principles reflected in any legislative proposals? If so, what are those proposals, and how might they be improved?

b. What kinds of protections might be appropriate to protect children and teens from data abuses? How might such protections appropriately address the differing developmental and informational needs of younger and older children? Are there any existing proposals that merit particular attention?

c. What kinds of protections might be appropriate to protect older adults from exploitative uses of their data?

d. In considering equity-focused approaches to privacy reforms, how should legislators, regulators, and other stakeholders approach purpose limitations, data minimization, and data retention and deletion practices?

e. Considering resources, strategic prioritization, legal capacities and constraints, and other factors, what can federal agencies currently do to better address harmful data collection and practices, particularly the impact of those practices on underserved or marginalized groups? What other executive actions might be taken, such as issuing executive orders?

6. What other actions could be taken in response to the problems outlined in this Request for Comment include?

a. What are the most effective ways for policymakers to solicit input from members of underserved or marginalized groups when crafting responses to these problems? What are the best practices, and what are the missteps to avoid?

b. How should legislators, regulators, and other stakeholders incorporate the multilingual needs of technology users in the United States into policy proposals intended to address privacy harms?

c. What roles should third-party audits and transparency reporting play in public policy responses to harmful data collection and processing, particularly in alleviating harms that are predominantly or disproportionately experienced by marginalized communities? What priorities and constraints should such mechanisms be guided by? What are the limitations of those mechanisms? What are some concrete examples that can demonstrate their efficacy or limits?

d. What role could design choices concerning the function, accessibility, description, and other components of consumer technologies play in creating

or enabling privacy harms, particularly as disproportionately experienced by marginalized communities? What role might design play in alleviating harms caused by discriminatory or privacy-invasive data practices?

e. What role should industry-developed codes of conduct play in public policy responses to harmful data collection and processing and the disproportionate harms experienced by marginalized communities? What are the limitations of such codes?

f. How can Congress and federal agencies that legislate, regulate, adjudicate, advise on, or enforce requirements regarding matters involving privacy, equity, and civil rights better attract, empower, and retain technological experts, particularly experts belonging to marginalized communities? Are there any best practices that should be emulated?

Dated: January 17, 2023.

Stephanie Weiner,

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2023–01088 Filed 1–19–23; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0009: Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on large trader reports and related forms.

DATES: Comments must be submitted on or before March 21, 2023.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0009, by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher J. Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan Lave, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5983; email: *jlave@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.[1]

Title: Large Trader Reports (OMB Control No. 3038–0009). This is a request for extension of a currently approved information collection.

Abstract: The reporting rules covered by OMB control number 3038–0009 (''the Collection'') are structured to ensure that the Commission receives adequate information to carry out its market and financial surveillance programs. The market surveillance programs analyze market information to detect and prevent market disruptions and enforce speculative position limits. The financial surveillance programs combine market information with financial data to assess the financial risks presented by large customer positions to Commission registrants and clearing organizations.[2]

The reporting rules are implemented by the Commission partly pursuant to the authority of Sections 4a, 4c(b), 4g, and 4i of the Commodity Exchange Act. Section 4a of the Act permits the Commission to set, approve exchange-set, and enforce speculative position limits. Section 4c(b) of the Act gives the Commission plenary authority to regulate transactions that involve commodity options. Section 4g of the Act imposes reporting and recordkeeping obligations on registered entities and registrants (including futures commission merchants (FCMs), introducing brokers, floor brokers, or floor traders), and requires each registrant to file such reports as the Commission may require on proprietary and customer positions executed on any board of trade in the United States or elsewhere. Lastly, section 4i of the Act requires the filing of such reports as the Commission may require when positions made or obtained on designated contract markets or derivatives transaction execution facilities equal or exceed Commission-set levels.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is

[1] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[2] OMB control number 3038–0009 previously included the burdens related to collections of information under 17 CFR part 19. That is no longer the case. Pursuant to position limits rule amendments, the burden associated with collections of information under part 19 (Reports by Persons Holding Bona Fide Hedge Positions and By Merchants and Dealers in Cotton) was moved to OMB control number 3038–0013 in 2020.

exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[3]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to be .25 hour per response, on average. These estimates include the time to locate the information related to the exemptions and to file necessary exemption paperwork. There are approximately 72,644 responses annually, thus the estimated total annual burden on respondents is 18,512 hours.

Respondents/Affected Entities: Large Traders, Clearing Members, Contract Markets, and other entities affected by Commission regulations 16.00 and 17.00 as well as Part 21.

Estimated number of respondents: 350.

Estimated Average Burden Hours per Respondent: 52.9 hours.

Estimated total annual burden on respondents: 18,152 hours.

Frequency of collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 17, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–01050 Filed 1–19–23; 8:45 am]

BILLING CODE 6351–01–P

[3] 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before February 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR–Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0023, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Christopher Cummings, Special Counsel, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5445; or *ccummings@cftc.gov,* and refer to OMB Control No. 3038–0023.

SUPPLEMENTARY INFORMATION:

Title: Registration under the Commodity Exchange Act (OMB Control No. 3038–0023). This is a request for an extension of a currently approved information collection.

Abstract: The information collected under OMB Control No. 3038–0023 is gathered through the use of forms for registration of firms and individuals who are required by the Commodity Exchange Act (''CEA'') to register with the Commission. The CEA requires commodity interest market intermediaries and participants to register, including: Futures commission merchants and introducing brokers (7 U.S.C. 6d); Commodity pool operators and commodity trading advisors (7 U.S.C. 6m(1)); Retail foreign exchange dealers (7 U.S.C. 2(c)); Associated persons (7 U.S.C. 6k); Floor traders or floor brokers (7 U.S.C. 6e); and Swap dealers and major swap participants (7 U.S.C. 6s(a)). The CFTC uses various forms for registration (and withdrawal therefrom) (the ''Registration Forms''). OMB Control No. 3038–0023 applies to the Registration Forms for registration of persons other than swap dealers and major swap participants.[2]

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. On October 18, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 63051 (''60-Day Notice''). The

[1] 17 CFR 145.9.

[2] Forms for registration of swap dealers and major swap participants are the subject of a separate information collection (OMB Control Number 3038–0072).

Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its burden estimate for this collection to reflect its estimate of the current number of CFTC registrants subject to the requirements of Part 162 regulations. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 78,055.

Estimated Total Annual Burden Hours: 7,852 hours.

Frequency of Collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 17, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–01054 Filed 1–19–23; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Management and Budget (''OMB'') for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before February 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the Commission or CFTC) by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0099, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx,* or by any of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Philip Newsom, Attorney-Advisor, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5301, email: *pnewsom@cftc.gov,* and refer to OMB Control No. 3038–0055.

SUPPLEMENTARY INFORMATION:

Title: Privacy of Consumer Financial Information (OMB Control No. 3038–0055). This is a request for an extension of a currently approved information collection.

Abstract: Section 124 of the Commodity Futures Modernization Act of 2000[2] amended the Commodity Exchange Act (the ''Act'') and added a new Section 5g[3] to the Act to (i) provide that futures commission merchants, commodity trading advisors, commodity pool operators, and introducing brokers that are subject to CFTC jurisdiction with respect to any financial activity shall be treated as a financial institution for purposes of Title V, Subtitle A of the Gramm-Leach-Bliley Act (''GLB Act''), (ii) treat the Commission as a Federal functional regulator for purposes of applying the provisions of the GLB Act, and (iii) direct the Commission to prescribe regulations under Title V of the GLB Act. The Commission adopted regulations for these entities under part 160 and later extended them to retail foreign exchange dealers, swap dealers, and major swap participants.[4] Part 160 requires those subject to the regulations, among other things, to provide privacy and opt out notices to customers and to adopt appropriate policies and procedures to safeguard customer records and information. In April 2019, the Commission adopted amendments to its regulations to provide an exception to its annual privacy notice requirement under certain conditions.[5]

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. On October 21, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 64018 (''60-Day Notice''). The Commission did not receive any substantive comments on the 60-Day Notice.

Burden Statement: The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 2,164.

Estimated Number of Annual Responses per Respondent: 95.

Estimated Total Number of Annual Responses: 205,580.

Estimated Time per Response: 2 minutes.

Estimated Total Annual Burden Hours: 6,853.

Frequency of Collection: As applicable.

[1] 17 CFR 145.9.

[2] Section 124, Appendix E of Public Law 106–554, 114 Stat. 2763 (2000).

[3] 7 U.S.C. 7b–2.

[4] 17 CFR part 160. See Privacy of Customer Information, 66 FR 21235 (April 27, 2001); Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55409 (Sept. 10, 2010); and Privacy of Consumer Financial Information; Conforming Amendments Under Dodd-Frank Act, 76 FR 43874 (July 22, 2011).

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 17, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–01053 Filed 1–19–23; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2023–HQ–0003]

Proposed Collection; Comment Request

AGENCY: Army Corps of Engineers, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the U.S. Army Corps of Engineers announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 21, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Waterborne Commerce Statistics Center, P.O. Box 60267, New Orleans, Louisiana 70160, John Dubberley, or call the Waterborne Statistics Center at (504) 862–1441.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Vessel Operation Report; ENG Forms 3926, 3925, 3925B, 3925C, and 3925P; OMB Control Number 0710–0006.

Needs and Uses: The information collection requirement is necessary to determine usage on the nation's waterway network. The WCSC and the LPMS databases are the sole government sources for information in the United States on domestic waterborne commerce and lock or canal operation. The Army Corps of Engineers is the agency charged with the collection of this data due to its responsibility for the planning, design, construction, rehabilitation, operation, and maintenance of the inland waterway systems, the Great Lakes, and the channels of the coastal ports.

The aggregate data collected under these programs are published in the annual publications, Waterborne Commerce of the United States, Parts 1–5, Lock Performance Monitoring System Quarterly Reports, and Waterborne Transportation Lines of the United States. Each database and publication provide essential information for an understanding of the utilization of our Nation's navigation systems and the fleet using these systems. The data bases provide essential information to those with the responsibilities over the physical system or to those involved in shipping or moving commodities on the Nation's waterways.'' [River and Harbor Act of September 22, 1922 (42 Stat. 1043)].

Affected Public: Individuals or households.

Annual Burden Hours: 10,080.

Number of Respondents: 840.

Responses per Respondent: 12.

Annual Responses: 10,080.

Average Burden per Response: 1 hour.

Frequency: On occasion.

The end result of using both the ENG Form 3925 series and ENG Form 3926, despite collecting very similar data, is to ensure WCSC is able to paint a complete picture of vessel movements and cargo carried on U.S. waterways. Each set of data produced from the forms allows WCSC to ensure accuracy and completeness. The data are used to annually publish Waterborne Commerce of the United States (WCUS) Ports and Waterways, which presents detailed data on the movements of vessels and commodities at the ports and harbors and on the waterways and canals of the United States and its territories. It also provides statistics on the foreign and domestic waterborne commerce moved through the U.S. waters. Congress receives this annual report, and the data contained therein are used in cost-benefit analyses for new projects, rehabilitation projects, and operations and maintenance of existing projects. It is also used by other Federal agencies involved in transportation and security. Researchers and private organizations also use the data regularly to help decide on which locales are best models for their studies/needs.

Dated: January 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01078 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0102]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Qualitative Data Collection on Access to Food on and Near Military Installations; OMB Control Number 0704–AFMI.

Type of Request: New.

Number of Respondents: 360.

Responses per Respondent: 1.

Annual Responses: 360.

Average Burden per Response: 40 minutes.

Annual Burden Hours: 240 hours.

Needs and Uses: The Military Community & Family Policy (MC&FP) within the DoD's Office of the Deputy Assistant Secretary of Defense is requesting Office of Management and Budget clearance for Qualitative Data Collection on Enlisted Service Member Access to Food on or Near Military Installations. This collection of information is necessary for MCFP to collect qualitative data through interviews and/or focus groups with Enlisted Active Duty Service members and spouses of Enlisted Active Duty Service members to understand the eating and spending patterns of the Enlisted military. Survey data has shown that 24% of the Active Duty Force report some level of food insecurity; the prevalence is higher in the Enlisted population and higher for those who live on-base than off-base. Similar data patterns were seen in the Active Duty Spouse Survey. At this time, little is known about the underlying causes of higher rates of food insecurity in the military, especially as it pertains to those who experience food insecurity while living on a base with dining facilities. Qualitative data collection will allow the DoD to collect data that will inform targeted initiatives to reduce food insecurity. Data collection will address the access to nutritious food and financial management of Service members and spouses' financial management practices.

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01090 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0024]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 21, 2023

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Record of Emergency Data; DD Form 93; OMB Control Number 0704–ROED.

Type of Request: Collection in use without an OMB Control Number.

Number of Respondents: 1,739,012.

Responses per Respondent: 1.

Annual Responses: 1,739,012.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 144,918.

Needs and Uses: The DD Form 93 is used by Service members to designate beneficiaries for certain benefits in the event of the Service member's death. It is also a guide for disposition of the member's pay and allowances if captured, missing or interned. It also shows the names and addresses of the person(s) the Service member desires to be notified in case of emergency or death, and designates the person authorized to direct disposition of the Service member's remains upon death. For civilian personnel, it is used to expedite the notification process in the event of an emergency and/or the death of the member. This requirement is identified in DoDI 1300.18, ''Department of Defense Personnel Casualty Matters, Policies, and Procedures.'' The goal is to retain decisions by service members and deploying contractors relating to persons to be notified in the event of illness, injury, missing status, or death and to capture decisions as it relates to the provision of benefits and designation of a person authorized to direct disposition of their remains upon death. Support staff are able to direct benefits and decisional briefings to those designated as beneficiaries and decision makers as designated by the Service member or deploying contractor.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01091 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0005]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness.(OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 21, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Manpower Data Center, 4800 Mark Center Drive, Alexandria, VA 22350, Robert Eves, 571–372–1956, email: *robert.c.eves.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for DEERS Enrollment/ID Card Issuance; DD Form 1172–2; OMB Control Number 0704–0415.

Needs and Uses: The information collected is used to determine an individual's eligibility for benefits and privileges, to provide a proper identification card reflecting those benefits and privileges, and to maintain a centralized database of the eligible population.

Affected Public: Individuals and households.

Annual Burden Hours: 114,444.

Number of Respondents: 2,288,877.

Responses per Respondent: 1.

Annual Responses: 2,288,877.

Average Burden per Response: 3 minutes.

Frequency: On occasion.

Dated: January 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01082 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Regents, Uniformed Services University of the Health Sciences (BoR USUHS) will take place.

DATES: Monday, February 6, 2023, open to the public from 1:00 p.m. to 5:00 p.m.

ADDRESSES: Medical Education and Training Campus (METC) Headquarters, Second Floor Large Conference Room, 3716 Corporal Johnson Rd., San Antonio, TX 78234. The meeting will be held both in-person and virtually. To participate in the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Annette Askins-Roberts, Designated Federal Officer (DFO), at (301) 295–3066 or *annette.askins-roberts@usuhs.edu.* Mailing address is 4301 Jones Bridge Road, Bethesda, MD 20814. Website: *https://www.usuhs.edu/ao/board-of-regents.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the USD(P&R), on academic and administrative matters critical to the full accreditation and successful operation of Uniformed Services University (USU). These actions are necessary for USU to pursue its mission, which is to educate, train, and comprehensively prepare uniformed services health professionals, officers, scientists, and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The schedule includes opening comments from the Chair; a report by the USU President; an overview of the impact of the Fiscal Year 2023 National Defense Authorization Act on USU; an overview of Center for Health Profession Education; an update on the accreditation process; and reports from the College of Allied Health Sciences, the School of Medicine, the Graduate School of Nursing, and the Postgraduate Dental College.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C. Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102.3.165), the meeting will be held in-person and virtually and is open to the public from 1:00 p.m. to 5:00 p.m. Seating is on a

first-come basis. Members of the public wishing to attend the meeting in-person or virtually should contact Ms. Celeste Hermano via email at *celeste.hermano.ctr@usuhs.edu* no later than five business days prior to the meeting.

Written Statements: Pursuant to section 10(a)(3) of the FACA and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the BoR USUHS about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to Ms. Askins-Roberts at the address noted in the **FOR FURTHER INFORMATION CONTACT** section. Written statements that do not pertain to a scheduled meeting of the BoR USUHS may be submitted at any time. If individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least five calendar days prior to the meeting. Otherwise, the comments may not be provided to or considered by the Board until a later date. The DFO will compile all timely submissions with the BoR USUHS' Chair and ensure such submissions are provided to BoR USUHS members before the meeting.

Dated: January 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01069 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0088]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Qualified Facility List Application Form; DLA Form 2507; OMB Control Number 0704–AQFL.

Type of Request: Collection in use without an OMB Control Number.

Number of Respondents: 250.

Responses per Respondent: 1.

Annual Responses: 250.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 250.

Needs and Uses: The information collected via the DLA Form 2507, ''Application for Qualified Facility List (QFL),'' is used to validate hazardous waste disposal facilities around the world. Prior to the U.S. Government sending hazardous waste to a disposal facility, the facility must undergo a vetting process to ensure they are properly permitted, insured, and operating within local, state, and/or national regulations. Respondents are companies that have entered into a contract with the United States Government to dispose of hazardous waste and hazardous material on behalf of the U.S. Government. The result of the review process is the disposal facility's addition to the QFL and authorized use by the disposal contractor. If the facility fails to meet the minimum standards established by DLA Disposition Services, the facility is rejected/disapproved and will not be added to the QFL.

Affected Public: Business or other for-profit.

Frequency: As required.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

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

DOD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: January 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01092 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0006]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant to the Secretary of Defense for Public Affairs, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant to the Secretary of Defense for Public Affairs, announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 21, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and

Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to David O'Connor, Office of the Assistant to the Secretary of Defense (Public Affairs), Community and Public Outreach, Room 2D982, 1400 Defense Pentagon, Washington, DC 20301–1400 or call 703–695–2036.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Joint Civilian Orientation Conference Program (JCOC) Eligibility of Nominators and Candidates; JCOC Nomination Form, JCOC Registration Form; OMB Control Number 0704–0562.

Needs and Uses: The information collection requirement is necessary to administer the JCOC Program; to verify the eligibility of nominators and candidates; and to select those nominated individuals for participation in JCOC.

Affected Public: Individuals or households.

Annual Burden Hours: 33.

Number of Respondents: 180.

Responses per Respondent: 1.

Annual Responses: 180.

Average Burden per Response: 11 minutes.

Frequency: Annually.

Respondents are individuals authorized to nominate candidates for participation in JCOC, and candidates nominated for and selected to participate in JCOC. The JCOC Nomination Form and Registration Form each record the nominator's credentials and contact information and the candidate's credentials and contact information. The completed forms are used to administer the JCOC program, verify the eligibility of nominators and candidates, and to select those nominated individuals for participation in JCOC, which is impossible to do without this information. Ensuring the credentials of nominators and candidates is vital to the integrity and accountability of the JCOC program.

Dated: January 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01087 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0008]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 21, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to USD(P&R),OASD(HA),HSP&O; 7700 Arlington Blvd., Room 3M631, Falls Church, VA 22042; Dr. Paul Ciminera; 703–681–1708, *paul.ciminera.civ@health.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Separation Health Assessment; DD Form 3146; OMB Control Number 0704–SHAS.

Needs and Uses: The form will be used to document physical examinations and mental health assessments conducted for Service members at separation from service pursuant to section 1145 of Title 10 of the United Sates Code and DoD Instruction 6040.46, ''The Separation History and Physical Examination (SHPE) for the DoD Separation Health Assessment (SHA) Program.'' The Department of Defense developed DD Form 3146 in coordination with the Department of Veterans Affairs (VA) as a common form for documentation of the separation health assessment. Once approved for official use, the DD Form 3146 will replace DD Forms 2807–1, ''Report of Medical History,'' and 2808, ''Report of Medical Examination,'' for documentation of health assessments of Service members required at their separation, thereby fulfilling the common form objective in the January 24, 2022 VA/DoD Memorandum of Agreement concerning Separation Health Assessments.

Affected Public: Individuals and households.

Annual Burden Hours: 100,000.

Number of Respondents: 200,000.

Responses per Respondent: 1.

Annual Responses: 200,000.

Average Burden per Response: 30 minutes.

Frequency: Once.

Dated: January 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01094 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

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

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Business Board (''the Board'') will take place.

DATES: Closed to the public Wednesday, February 1, 2023 from 9:40 to 11:30 a.m., from 12:25 to 1:30 p.m., from 2:10 to 3:45 p.m., and from 5:30 to 7:35 p.m. Open to the public Thursday, February 2, 2023 from 9 a.m. to 12:35 p.m. All Eastern time.

ADDRESSES: The open and closed portions of the meeting will be in rooms 1E840 and 4D880 in the Pentagon, Washington DC, and at the Defense Logistics Agency Headquarters, Ft. Belvoir, VA. The public portions of the meeting will be conducted by teleconference only. To participate in the public portions of the meeting, see the Meeting Accessibility section for instructions.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hill, Designated Federal Officer (DFO) of the Board in writing at Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155; or by email at *jennifer.s.hill4.civ@mail.mil;* or by phone at 571–342–0070.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer, the Defense Business Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its February 1–2, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., App.), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent, strategic-level, private sector and academic advice and counsel on enterprise-wide business management approaches and best practices for business operations and achieving National Defense goals.

Agenda: The Board will begin in closed session on February 1 from 9:40 to 11:30 a.m. The DFO, Ms. Jennifer Hill will open the session, followed by a classified brief on What the Department is doing to Speed the Transition of Cutting-edge Technology to the Battlefield and Avoid the 'Valley of Death' from Deputy Secretary of Defense, Hon. Kathleen Hicks. After a short break, the Board will receive a classified brief on Building the Fleet of the Future Despite the Industrial Challenges of the Present from Secretary of the Navy, Hon. Carlos Del Toro. The DFO will then adjourn the closed session. The Board will reconvene in closed session on February 1 at 12:25 p.m. The DFO will open the closed session, followed by a classified brief on Current Events in National Security by the Chairman of the Joint Chiefs of Staff, GEN Mark Milley. The DFO will adjourn the closed session. The Board will travel to Defense Logistics Agency Headquarters (DLA) at Fort Belvoir and reconvene in closed session on February 1 at 2:10 p.m. with a classified brief on Current Challenges Impacting DoD Supply Chains from VADM Michelle Skubic, USN, Director, DLA or Mr. Brad Bunn, Vice Director, DLA. The DFO will adjourn the closed session, and the Board will return to the Pentagon. The Board will meet in closed session February 1 from 5:30 to 7:35 p.m. The DFO will open the closed session followed by remarks by Board Chair, Hon. Deborah James and Deputy Secretary, Hon. Kathleen Hicks. Next, the Board will receive a classified brief on Key Challenges to Recruiting, Retention, and Readiness by Secretary of the Army, Hon. Christine Wormuth. The DFO will adjourn the closed session. The Board will begin in open session on February 2 from 9 a.m. to 12:35 p.m. The DFO will open the session and Hon. Deborah James will provide a Chair's welcome to members and guests. Next, the Chair of the Business Operations Advisory Subcommittee, Mr. David Beitel will lead the presentation, deliberation, and vote on the IT User Experience Study. The Chair of the Talent Management, Culture & Diversity Subcommittee, Ms. Jennifer McClure will then lead the presentation, deliberation, and vote on Building a Civilian Talent Pipeline Study. Hon. Deborah James, Board Chair will provide closing remarks and the DFO will adjourn the open session. The latest version of the agenda will be available on the Board's website at: *https://dbb.defense.gov/Meetings/Meeting-February-2023/.*

Meeting Accessibility: In accordance with Section 10(d) of the FACA and 41 CFR 102–3.155, it is hereby determined that portions of the February 1–2 meeting of the Board will include classified information and other matters covered by 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public on February 1, 2023 from 9:40 to 11:30 a.m., from 12:25 to 1:30 p.m., from 2:10 to 3:45 p.m., and from 5:30 to 7:35 p.m. This determination is based on the consideration that it is expected that discussions throughout these periods will involve classified matters of national security. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of these portions of the meeting. To permit these portions of the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the Board's findings and recommendations to the Secretary of Defense and to the Deputy Secretary of Defense. Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140, the portion of the meeting on February 2 from 9 a.m. to 12:35 p.m. is open to the public via teleconference. Persons desiring to attend the public session are required to register. To attend the public session, submit your name, affiliation/organization, telephone number, and email contact information to the Board at *osd.pentagon.odam.mbx.defense-business-board@mail.mil.* Requests to attend the public session must be received no later than 4 p.m. on Monday, January 30, 2023. Upon receipt of this information, the Board will provide further instructions for telephonically attending the meeting.

Written Comments and Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the Board in response to the stated agenda of the meeting or regarding the Board's mission in general. Written comments or statements should be submitted to Ms. Jennifer Hill, the DFO, via electronic mail (the preferred mode of submission) at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements

submitted in response to the agenda set forth in this notice by Monday, January 30, 2023, to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chair and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: January 13, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01013 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[COE–2023–0002]

Water Resources Development Act of 2022 Comment Period and Stakeholder Sessions

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Request for comments; announcement of stakeholder sessions.

SUMMARY: The Assistant Secretary of the Army for Civil Works (ASA (CW)) is seeking public comment on any provisions in the Water Resources Development Act (WRDA) of 2022. The Office of the ASA(CW) will consider all comments received during the 60-day public comment period in the preparation of any guidance.

DATES: The public comment period will end on March 21, 2023. To ensure your comment is considered during development of implementation guidance, comments should be received on or before that date. In addition, three stakeholder sessions will be held to allow the public to provide input on any provisions in WRDA 2022 at the following dates/times: February 15, 2023 from 2:00 p.m. to 4:00 p.m. Eastern; February 22, 2023 from 2:00 p.m. to 4:00 p.m. Eastern; March 1, 2023 from 2:00 to 4:00 p.m. Eastern. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the stakeholder sessions.

ADDRESSES: You may submit written comments, identified by Docket ID No. COE–2023–0002, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov/. Follow the online instructions for submitting comments.

Email: WRDA2022@usace.army.mil. Include Docket ID No. COE–2023–0002 in the subject line of the message.

Mail: U.S. Army Corps of Engineers, ATTN: Ms. Amy Frantz, CEW–P, U.S. Army Corps of Engineers, 3F91, 441 G St. NW, Washington, DC 20314.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: All requests for further information on the notice and the stakeholder sessions may be directed to Mr. Gib Owen, 571–274–1929 or *gib.a.owen.civ@army.mil.* Mr. Owen may also be contacted by mail at Office of the Assistant Secretary of the Army for Civil Works, 108 Army Pentagon. Washington, DC 20310–0108.

SUPPLEMENTARY INFORMATION: This comment period regarding WRDA 2022 (Pub. L. 117–81) is being conducted in accordance with Section 1105 of the Water Resources Development Act of 2018 (Pub. L. 115–270). A copy of WRDA 2022 can be found at: *https://www.usace.army.mil/Missions/Civil-Works/Water-Resources-Development-Act/.* The ASA(CW) and the Corps will hold focused stakeholder sessions using webinars/teleconferences by means of the web link *https://usace1.webex.com/meet/WRDA2022* and teleconference information at (844) 800–2712, Code 199 937 4287. See dates and times above. Commenters can provide information on any provision of interest during each session. Written final guidance will be available to the public on a publicly accessible website (*https://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/wrda_2022/*).

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2023–01043 Filed 1–19–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

National Wetland Plant List

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The National Wetland Plant List (NWPL) provides plant species indicator status ratings, which are used in determining whether the hydrophytic vegetation factor is met when conducting wetland delineations under the Clean Water Act and wetland determinations under the Wetland Conservation Provisions of the Food Security Act. Other applications of the NWPL include wetland restoration, establishment, and enhancement projects. To update the NWPL, the U.S. Army Corps of Engineers (USACE), as part of an interagency effort with the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), and the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), is announcing the availability of the proposed changes to the 2022 NWPL and its web address to solicit public comments. The public will now have the opportunity to comment on the proposed changes to wetland indicator status ratings for two plant species in the Arid West (AW) region. In addition, we are accepting comments on the proposal to move from a two-year update cycle to a three-year update cycle for the NWPL. Finally, USACE is seeking comments on the overall NWPL update process.

DATES: Comments must be submitted on or before March 21, 2023.

ADDRESSES: U.S. Army Corps of Engineers, *Attn:* CECW–CO–R, 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Brianne McGuffie, Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, by phone at 202–761–4750 or by email at *brianne.e.mcguffie@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Background

USACE administers the NWPL for the United States (U.S.) and its territories. Responsibility for the NWPL was transferred to USACE from the FWS in 2006. The NWPL has undergone several revisions since its inception in 1988. Additions or deletions to the NWPL represent new records, range extensions, nomenclatural and taxonomic changes, and newly proposed species. The latest review process began in 2022 and included review by Regional Panels (RPs) and the National Panel (NP).

Wetland Indicator Status Ratings

On the NWPL, there are five categories of wetland indicator status

ratings used to indicate a plant's likelihood for occurrence in wetlands versus non-wetlands: Obligate Wetland (OBL), Facultative Wetland (FACW), Facultative (FAC), Facultative Upland (FACU), and Upland (UPL). These rating categories are defined by the NP as follows: OBL—almost always occur in wetlands; FACW—usually occur in wetlands, but may occur in non-wetlands; FAC—occur in wetlands and non-wetlands; FACU—usually occur in non-wetlands, but may occur in wetlands; UPL—almost always occur in non-wetlands. These category definitions are qualitative descriptions that better reflect the qualitative supporting information, rather than numeric frequency ranges. The percentage frequency categories used in the older definitions are only used for testing problematic or contested species being recommended for indicator status changes. Plus and minus designations and wetland indicator designations such as No Indicator (NI), No Occurrence (NO), and No Agreement (NA) were removed in 2012 and are no longer used on the NWPL. More information on the specifics of how to use these ratings is available on the NWPL website at *https://wetland-plants.sec.usace.army.mil/.*

The NWPL is utilized in conducting wetland delineations under the authority of section 404 of the Clean Water Act (33 U.S.C. 1344) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*) and wetland determinations under the authority of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*). For the purposes of determining how often a species occurs in wetlands, wetlands are defined as either (1) those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 CFR 328.3) or (2) ''except when such term is part of the term 'converted wetland,' means land that has a predominance of hydric soils; is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and under normal circumstances does support a prevalence of such vegetation, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.'' (16 U.S.C. 3801(a)(27) and 7 CFR 12.2). Because each plant species being evaluated occurs as part of a vegetation assemblage, examining all species present in relation to their assigned wetland fidelity may be useful in assessing hydrophytic vegetation.

2022 Update Information

For the 2022 NWPL update, one wetland indicator status rating change, for *Isocoma menziesii,* was submitted by the public. In addition, we received a comment in response to the initial **Federal Register** Notice for the 2020 NWPL Update (**Federal Register** Notice, 86 FR 15656, March 24, 2021) recommending that the wetland indicator status rating for *Populus fremontii* be changed from FAC to FACW in the AW. As mentioned in the final **Federal Register** Notice for the 2020 NWPL Update (**Federal Register** Notice 86 FR 60449, November 2, 2021), because this species was not proposed for review or a recommended wetland indicator status rating change prior to the initiation of the 2020 NWPL update, we are addressing this species as part of the 2022 NWPL update. The NWPL NP and the AW RP reviewed the submitted information associated with the two proposed changes and determined the proposed 2022 wetland indicator status ratings for these species as shown below.

Species	Region	Current 2020 NWPL rating	Proposed 2022 NWPL rating
Isocoma menziesii	AW	FAC	FACU.
Populus fremontii	AW	FAC	FACW.

On the current 2020 NWPL, *Populus fremontii* is listed as a synonym of *Populus deltoides* (*i.e.,* these two species are grouped together as a single species). A synonym is an alternate scientific name that is not the currently valid scientific name and has been changed based on new scientific evidence. Scientific name changes often occur due to lumping two or more formerly separate species into one species or splitting one or more species from an existing species. When either of these circumstances occur, the ''new'' species may need re-evaluation of their wetland indicator status rating.

In 2017, the USACE, EPA, FWS, and NRCS signed a Memorandum of Agreement (MOA) [1] that, among other things, required that the NWPL use the nomenclature used in the NRCS PLANTS Database.[2] In accordance with the MOA, we are changing the nomenclature of *Populus fremontii* to align with the nomenclature for this species as found in the NRCS PLANTS Database. This change will remove *Populus fremontii* as a synonym of *Populus deltoides,* and more appropriately place *Populus fremontii* on the NWPL as a separate, stand-alone species. Because the wetland indicator status rating for *Populus deltoides* is FAC, the current wetland indicator status rating for *Populus fremontii* is also FAC. As part of the 2022 NWPL update, we are proposing to change the wetland indicator status rating of *Populus fremontii* from FAC to FACW in the AW. This proposed change is specific to Populus fremontii and will not result in a change to the existing wetland indicator status rating for *Populus deltoides.*

Changing the Frequency of NWPL Updates

When the NWPL was first updated in 2012, updates were to occur annually, with subsequent updates occurring in 2013 and 2014. However, the frequency of the annual updates increased confusion as to which NWPL update was valid at a given time, so the updates moved to biennial updates in 2016. Since that time, the number of proposed changes from the public has gradually decreased. The continued decrease in requests for changes, along with the potential for further reducing confusion as to which NWPL update was valid at a given time, has led us to the current

[1] U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish & Wildlife Service and the Natural Resources Conservation Service. (2017). *Memorandum of Agreement Among the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, the U.S. Fish & Wildlife Service and the Natural Resources Conservation Service for the Purpose of Updating and Maintaining the National Wetland Plant List.*

[2] USDA, NRCS. 2022. The PLANTS Database (*http://plants.usda.gov,* 08/05/2022). National Plant Data Team, Greensboro, NC USA.

proposal to move to a three-year update cycle, beginning with this 2022 update (*i.e.,* the next update will be in 2025 instead of 2024). We are seeking comments on the proposed change in frequency of NWPL updates or whether we should remain with biennial updates or move to some other update frequency.

Instructions for Providing Comments Online

USACE encourages public input in the form of data, comments, literature references, or field experiences, to help clarify the status of the species reviewed for this update. These same two reviewed species, and their proposed 2022 wetland ratings for the AW region, can be viewed at the NWPL homepage, *https://wetland-plants.sec.usace.army.mil/* under ''2022 NWPL Update Information.'' A link to provide general or species-specific comments in response to this notice is also available at this location. Users are encouraged to submit literature citations, herbaria records, experiential references, monitoring data, and other relevant information. Specific knowledge of, or studies related to, individual species are particularly helpful. When providing input or information on the proposed changes to the 2022 NWPL update, commenters should use their regional botanical and ecological expertise, field observations, reviews of the most recent indicator status information, appropriate botanical literature, floras, herbarium specimens with notation of habitat and associated species, habit data, relevant studies, and historic list information. Providing ratings without supporting documentation or information is not recommended. All submitted comments and information will be compiled and sent to the NWPL NP for their review and consideration.

In addition to requests for comments on the proposed changes to wetland indicator status ratings for two plant species in the AW region as well as the frequency of NWPL updates, USACE is also seeking comments on the overall NWPL update process. Detailed information on the update process, protocol, and technical issues can be found in the following documents, which are available on the ''NWPL Publications'' web page:

- Lichvar, Robert W. and Paul Minkin. Concepts and Procedures for Updating the National Wetland Plant List. 2008. ERDC/CRREL TN–08–3. Hanover, NH: U.S. Army Engineer Research and Development Center, Cold Regions Research and Engineering Laboratory. *https://wetland-plants.sec.usace.army.mil/nwpl_static/data/DOC/NWPL/pubs/2008_Lichvar_Minkin.pdf.*
- Lichvar, Robert W. and Jennifer J. Gillrich. Final Protocol for Assigning Wetland Indicator Status Ratings during National Wetland Plant List Update. 2011. ERDC/CRREL TN–11–1. Hanover, NH: U.S. Army Engineer Research and Development Center, Cold Regions Research and Engineering Laboratory. *https://wetland-plants.sec.usace.army.mil/nwpl_static/data/DOC/NWPL/pubs/2011v3_Lichvar_Gillrich.pdf.*
- Lichvar Robert W., Norman C. Melvin, Mary L. Butterwick, and William N. Kirchner. 2012. National Wetland Plant List Indicator Rating Definitions. ERDC/CRREL TN–12–1. Hanover, NH: U.S. Army Engineer Research and Development, Center Cold Regions Research and Engineering Laboratory. *https://wetland-plants.sec.usace.army.mil/nwpl_static/data/DOC/NWPL/pubs/2012b_Lichvar_et_al.pdf.*

Future Actions

Future updates to the NWPL will occur on a to-be-determined schedule. A change in indicator status for a given species, or a proposed species addition, may be requested at any time at *https://wetland-plants.sec.usace.army.mil/* under ''Submit NWPL Change Request.'' Submissions throughout the review period will be compiled and reviewed prior to each NWPL update and any resulting proposed changes will be reflected in the subsequent notice of an updated list.

Michael L. Connor,

Assistant Secretary of the Army (Civil Works).

[FR Doc. 2023–01026 Filed 1–19–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2023–HQ–0005]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Navy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 21, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Department of the Navy Information Management Control Officer, 2000 Navy Pentagon, Rm. 4E563, Washington, DC 20350, ATTN: Ms. Sonya Martin, or call 703–614–7585.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: CHINFO Brand and Opinion Research Study; OMB Control Number 0703–GLPS.

Needs and Uses: The Navy Chief of Information (CHINFO) is required to provide public affairs advice to the Secretary of the Navy and the Chief of Naval Operations. In order to provide informed advice, it is critical that CHINFO be able to assess the communication environment. To do so, it is necessary for the Navy to conduct recurrent national surveys to determine what Americans understand about their Navy and how this understanding changes over time. It is also necessary

to conduct targeted surveys as needed to determine the impact of individual communication activities. Periodic brand and opinion research assessments using scientific methods that collect and evaluate quantitative and qualitative research will allow CHINFO to understand the general public's perceptions, knowledge, issue awareness, message exposure, recall and salience, and engagement with the Navy. This understanding will allow CHINFO to adjust its communication efforts to better communicate with the public and better advise the Secretary of the Navy and the Chief of Naval Operations on public awareness and sentiment toward the Navy.

Affected Public: Individuals or households.

Annual Burden Hours: 1,118.

Number of Respondents: 4,418.

Responses per Respondent: 1.

Annual Responses: 4,418.

Average Burden per Response: 15.18 minutes.

Frequency: Quarterly for recurrent national surveys; On Occasion for targeted surveys.

CHINFO collects both qualitative and quantitative primary research data. The quantitative research is conducted quarterly using an existing online panel of at least 1,000 randomly sampled American adults. Quantitative research is also conducted at Navy events to determine the events' impact on Americans' perception of their Navy. Additionally, four times per year, the Navy will conduct pre-test and post-test pulse assessments to gauge the effectiveness of communication campaigns managed by CHINFO. These pulse assessments will be conducted either quantitatively or qualitatively.

Dated: January 17, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–01077 Filed 1–19–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0018]

Agency Information Collection Activities; Comment Request; Cash Management Contract URL Collection

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before MARCH 21, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0018. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Cash Management Contract URL Collection.

OMB Control Number: 1845–0147.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 573.

Total Estimated Number of Annual Burden Hours: 46.

Abstract: The Department of Education (the Department) is seeking an extension of OMB control number 1845–0147 for the collection of URLs hosting institutional contracts and contract data relating to campus banking agreements. The regulatory sections for this collection include 34 CFR 668.164(e)(2)(viii) and 34 CFR 668.164(f)(4)(iii)(B), are unchanged. The Department and the public have a strong interest in knowing the terms of marketing contracts of the millions of students receiving millions of dollars in Federal student aid. The Higher Education Act of 1965, as amended (HEA) strongly supports providing important consumer information to students and the public, as evidenced in several parts of the law. The increased transparency will help ensure accountability and encourage institutional practices that are in the interest of students.

Dated: January 17, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–01044 Filed 1–19–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before February 21, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 881–8585.

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: Baldev Dhillon, EHSS–74, (301)-903–0990, *Baldev.Dhillon@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–0300;

(2) *Information Collection Request Titled:* Environment, Safety and Health;

(3) *Type of Review:* Renewal;

(4) *Purpose:* The collections are used by DOE to exercise management oversight and control over its contractors in the ways in which the DOE contractors provide goods and services for DOE organizations and activities in accordance with the terms of their contract(s); the applicable statutory, regulatory and mission support requirements of the Department.

(5) *Annual Estimated Number of Respondents:* 775.

(6) *Annual Estimated Number of Total Responses:* 73,040.

(7) *Annual Estimated Number of Burden Hours:* 33,771.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $151,448.

Statutory Authority: Section 641 of the Department of Energy Organization Act, codified at 42 U.S.C. 7251, and the following additional authorities:

Computerized Accident/Incident Reporting System (CAIRS): DOE Order 231.1B (November 28, 2012).

Occurrence Reporting and Processing System (ORPS): DOE Order 232.2A (October 4, 2019).

Radiation Exposure Monitoring System (REMS): 10 CFR part 835; DOE Order 231.1B (November 28, 2012).

Annual Fire Protection Summary Application: DOE Order 231.1B (November 28, 2012).

Safety Basis Information System: 10 CFR part 830; DOE Order 231.1B (November 28, 2012).

DOE OPEXShare Lessons Learned System: DOE Order 210.2A (April 8, 2011).

Signing Authority

This document of the Department of Energy was signed on January 12, 2023, by Todd N. Lapointe, Director, Office of Environment, Health, Safety and Security, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 17, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–01040 Filed 1–19–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–59–000.
Applicants: Big Plain Solar, LLC.
Description: Big Plain Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/13/23.
Accession Number: 20230113–5193.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: EG23–60–000.
Applicants: Oak Trail Solar, LLC.
Description: Oak Trail Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/13/23.
Accession Number: 20230113–5194.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: EG23–61–000.
Applicants: Westlands Solar Blue (OZ) Owner, LLC.
Description: Westlands Solar Blue (OZ) Owner, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/13/23.
Accession Number: 20230113–5237.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: EG23–62–000.
Applicants: Chestnut Westside, LLC.
Description: Chestnut Westside, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/13/23.
Accession Number: 20230113–5239.
Comment Date: 5 p.m. ET 2/3/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2695–004.
Applicants: Lincoln Land Wind, LLC.
Description: Compliance filing: Compliance Filing Revising Tariff Record to be effective 11/1/2021.
Filed Date: 1/13/23.
Accession Number: 20230113–5025.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER22–2476–002.
Applicants: Arizona Public Service Company.
Description: Compliance filing: Flowgate Compliance Filing to be effective 1/13/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5094.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER22–2844–001.
Applicants: Duke Energy Carolinas, LLC.
Description: Compliance filing: DEF—Compliance Filing (ProCo) to be effective 12/31/9998.
Filed Date: 1/13/23.
Accession Number: 20230113–5156.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–828–000.
Applicants: Southwestern Electric Power Company.
Description: § 205(d) Rate Filing: SWEPCO–AECC–OECC (Prairie Grove) Delivery Point Agreement to be effective 12/16/2022.
Filed Date: 1/12/23.
Accession Number: 20230112–5156.
Comment Date: 5 p.m. ET 2/2/23.

Docket Numbers: ER23–829–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–J&R Power DevCo Generation Interconnection Agreement to be effective 12/16/2022.
Filed Date: 1/12/23.
Accession Number: 20230112–5157.
Comment Date: 5 p.m. ET 2/2/23.

Docket Numbers: ER23–830–000.
Applicants: Gravel Road Solar, LLC.
Description: Petition of Gravel Road Solar, LLC for a Limited Waiver of a New York Independent System Operator, Inc. Tariff Provision and for Expedited Action.
Filed Date: 1/12/23.
Accession Number: 20230112–5141.
Comment Date: 5 p.m. ET 1/19/23.

Docket Numbers: ER23–831–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2045R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 1/1/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5023.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–832–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 6751; Queue No. AD1–043 to be effective 12/15/2022.
Filed Date: 1/13/23.
Accession Number: 20230113–5027.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–833–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4043 WAPA/Upper Missouri G & T Electric Coop Interconnection Agreement to be effective 1/12/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5052.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–834–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 4044 WAPA/Roughrider Electric/Upper MO G & T Electric Interconnection Agreement to be effective 1/12/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5055.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–835–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2023–01–13_Seasonal Construct Tariff clean-up to be effective 3/15/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5064.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–836–000.
Applicants: Liberty Utilities (Granite State Electric) Corp.
Description: § 205(d) Rate Filing: Borderline Sales Rate Sheet Update January 2023 with Request for Notice Waiver to be effective 1/1/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5085.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–837–000.
Applicants: Southern Minnesota Municipal Power Agency.
Description: Request for Limited Waiver, et al. of Southern Minnesota Municipal Power Agency.
Filed Date: 1/13/23.
Accession Number: 20230113–5088.
Comment Date: 5 p.m. ET 1/27/23.

Docket Numbers: ER23–838–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2023–01–13 Applicant Participating Transmission Owner Agrmt—TransWest Express to be effective 3/15/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5107.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–839–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2023–01–13 TSGT Const Oper Main Agrmt 715–PSCo to be effective 1/14/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5117.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–840–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Calpine NITSA Rev 16 to be effective 1/1/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5118.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–841–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Att V to Clarify Financial Security Refund Eligibility to be effective 4/1/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5149.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–842–000.
Applicants: Big Plain Solar, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application and Request for Expedited Action to be effective 1/14/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5167.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–843–000.
Applicants: Oak Trail Solar, LLC.
Description: Baseline eTariff Filing: Market-Based Rate Application and Request for Expedited Action to be effective 1/14/2023.
Filed Date: 1/13/23.
Accession Number: 20230113–5169.
Comment Date: 5 p.m. ET 2/3/23.

Docket Numbers: ER23–844–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 6750; Queue No. AD2–033 to be effective 12/15/2022.
Filed Date: 1/13/23.
Accession Number: 20230113–5207.
Comment Date: 5 p.m. ET 2/3/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–26–000; ES23–27–000.
Applicants: South Carolina Generating Company, Inc., Dominion Energy South Carolina, Inc.
Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Dominion Energy South Carolina, Inc., et al.
Filed Date: 1/13/23.
Accession Number: 20230113–5155.
Comment Date: 5 p.m. ET 2/3/23.

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: January 13, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–01065 Filed 1–19–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8866–013]

Black Canyon Bliss, LLC; Notice of Waiver Period for Water Quality Certification Application

On January 11, 2023, Black Canyon Bliss, LLC submitted to the Federal Energy Regulatory Commission (Commission) evidence of the date on which the certifying agency received the certification request for a Clean Water Act section 401(a)(1) water quality certification filed with the Idaho Department of Environmental Quality, in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 4.34(b)(5) of the Commission's regulations,[1] we hereby notify the Idaho Department of Environmental Quality of the following:

Date of Receipt of the Certification Request: May 24, 2022.

Reasonable Period of Time to Act on the Certification Request: One year (May 24, 2023).

If the Idaho Department of Environmental Quality fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: January 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–01064 Filed 1–19–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 4.34(b)(5).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN13–15–000]

BP America Inc., BP Corporation North America Inc., BP America Production Company, BP Energy Company; Updated Notice of Designation of Commission Staff as Non-Decisional

With respect to orders issued by the Commission in the above-captioned docket, with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2022), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2022), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Grace Kwon
Laura Vallance
Jennifer Gordon
Joseph Cleaver

Dated: January 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–01060 Filed 1–19–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL03–3–010]

Natural Gas Intelligence; Notice of Filing

Take notice that on January 3, 2023, Natural Gas Intelligence filed a formal application to the Federal Energy Regulatory Commission's (Commission) for re-approval as a price index developer fully or substantially in compliance with the Commission's April 2022 *Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs (Revised Policy Statement).*[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on January 25, 2023.

Dated: January 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–01063 Filed 1–19–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 179 FERC ¶ 61,036 (2022).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–113–000]

Alliance Pipeline, L.P.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Three Rivers Interconnection Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Three Rivers Interconnection Project (Project), proposed by Alliance Pipeline, L.P. (Alliance) in the above-referenced docket. Alliance proposes to construct and operate about 2.9 miles of 20-inch-diameter natural gas transmission pipeline and associated facilities in Grundy County, Illinois. This pipeline would connect Alliance's existing interstate natural gas transmission system to Competitive Power Venture's Three Rivers Energy

Center, currently under construction; and as proposed, would transport up to 210 million standard cubic feet per day of natural gas to this facility. According to Alliance, the Project is necessary to provide Competitive Power Venture's Three Rivers Energy Center with access to an additional natural gas supply source.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts, but none that are considered significant. Regarding climate change impacts, this EIS is not characterizing the Project's greenhouse gas emissions as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.[1] The EIS also concludes that no system, route, or other alternative would meet the Project objective while providing a significant environmental advantage over the Project as proposed.

The U.S. Environmental Protection Agency (EPA) and the U.S. Nuclear Regulatory Commission (NRC) participated as cooperating agencies in the preparation of the EIS. Specifically, the EPA provided FERC environmental staff with recommendations to inform the EIS and the NRC advised FERC environmental staff concerning nuclear safety reviews and the associated regulatory process with respect to Alliance's proposal and the nearby Dresden Nuclear Generating Station and General Electric Hitachi Nuclear Energy Morris Independent Spent Fuel Storage Installation. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The Commission mailed a copy of the *Notice of Availability of the Final Environmental Impact Statement for the Proposed Three Rivers Interconnection Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP21–113–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: January 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–01062 Filed 1–19–23; 8:45 am]

BILLING CODE 6717–01–P

[1] *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews,* 178 FERC ¶ 61,108 (2022); 178 FERC ¶ 61,197 (2022).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP95–35–000]

EcoEléctrica, L.P.; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on December 14, 2022, the Federal Energy Regulatory Commission (Commission) will convene a Commission staff-led technical conference to discuss issues raised related to the structural analysis of EcoEléctrica, L.P.'s (EcoEléctrica) liquefied natural gas (LNG) storage tank at its LNG terminal in Peñuelas, Puerto Rico. The technical conference will be held on January 18–19, 2023, from approximately 9:00 a.m. to 4:00 p.m. Eastern time. The conference will be held virtually and in person (Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC). The agenda for this event is attached. The technical conference will not be open for the public to attend. Only those specified in the December 14, 2022 Notice may attend.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference including how to participate, virtual and in person meeting details, etc., please contact Karla Bathrick at *karla.bathrick@ferc.gov* or at (202) 502–6328.

Dated: January 13, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–01061 Filed 1–19–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–053]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed January 9, 2023 10 a.m. EST Through January 13, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230005, Draft, BLM, ND, North Dakota Resource Management Plan Revision, Comment Period Ends: 04/20/2023, Contact: Kristine Braun 701–227–7725.

EIS No. 20230006, Draft, BLM, ID, Lava Ridge Wind Project, Comment Period Ends: 03/21/2023, Contact: Kasey Prestwich 208–732–7204.

EIS No. 20230007, Draft, TxDOT, TX, US 380 McKinney, Comment Period Ends: 03/21/2023, Contact: Doug Booher 512–416–2663.

EIS No. 20230008, Final, FERC, IL, Three Rivers Interconnection Project, Review Period Ends: 02/21/2023, Contact: Office of External Affairs 866–208–3372.

Amended Notice

EIS No. 20220183, Draft, USACE, CA, Delta Conveyance Project, Comment Period Ends: 03/16/2023, Contact: Zachary Simmons 415–503–2951. Revision to FR Notice Published 12/16/2022; Extending the Comment Period from 02/14/2023 to 03/16/2023.

Dated: January 13, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–01066 Filed 1–19–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WC DOCKET NO. 23–01, CC Docket No. 92–237; DA 23–8, FR ID 123272]

Wireline Competition Bureau Announces New Docket for Use in North American Numbering Council Filings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) of the Federal Communications Commission (Commission) establishes new WC Docket No. 23–01 for use in filing materials related to the North American Numbering Council (NANC).

DATES: January 4, 2023.

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

FOR FURTHER INFORMATION CONTACT: You may also contact Christi Shewman, Designated Federal Officer, at *christi.shewman@fcc.gov* or 202–418–0646. More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council.*

SUPPLEMENTARY INFORMATION: The NANC is a federal advisory committee created to advise the Commission on numbering issues and to make recommendations that foster efficient and impartial number administration. It is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2. The Bureau establishes new WC Docket No. 23–1 for use in filing materials related to the NANC. Opening a new, dedicated docket will enable the public to more easily access materials related to the NANC going forward. Comments or other filings to the NANC should now be filed in new docket WC Docket No. 23–01 and should no longer be filed in CC Docket No. 92–237. Filings relating to the NANC previously submitted to CC Docket No. 92–237 are incorporated into the new NANC docket WC Docket No. 23–01 by reference.

Federal Communications Commission.

Jodie May,

Division Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2023–01076 Filed 1–19–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2023–02]

Notice of Public Hearing

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission is announcing the date, time, and place of a public hearing on its audit procedures for political committees that do not receive public funds.

DATES: A hybrid public hearing will be held at 11:00 a.m. on Tuesday, February 14, 2023. Anyone seeking to testify at the hearing must file written comments by Wednesday, February 8, 2023, and must include in the written comments a request to testify. Additional information about written comments appears in the Commission's Notice of Hearing and Request for Public Comments concerning its policies and procedures for the auditing of political committees that do not receive public funds, published on January 9, 2023.

ADDRESSES: The hearing will be held at the Federal Election Commission, 1050 First St. NE, 12th floor Hearing Room, Washington, DC 20463, and virtually. Current COVID–19 safety protocols will apply to all in-person attendees. These protocols are based on the CDC COVID–19 community level in Washington, DC, and will be updated on the Commission's contact page, *www.fec.gov/contact/,* by the Monday before the hearing. Virtual attendees may access the meeting by going to the Commission's website, *www.fec.gov,* and clicking on the banner to be taken to the hearing page.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Joanna S. Waldstreicher, Attorney, Office of the General Counsel, at *audit2023@fec.gov* or 202–694–1650.

SUPPLEMENTARY INFORMATION: On January 9, 2023, the Commission published a Notice of Hearing and Request for Public Comments concerning its policies and procedures for the auditing of political committees that do not receive public funds. 88 FR 1228 (Jan. 9, 2023). The Commission will use the public comments that it receives and the testimony of witnesses at the public hearing to help it determine whether to adjust its internal directives or practices and, if so, how. The Commission is not, at this time, seeking comments or testimony on its policies, practices, and procedures regarding audits of publicly funded committees.

The Commission welcomes comments and testimony on how it might increase fairness, substantive and procedural due process, efficiency, and effectiveness of the Commission's auditing of political committees, and how the audit function could best serve the Commission's mission and enhance disclosure and compliance with the Act. The Commission is particularly interested in hearing from committees that have directly interacted with the Commission in the audit process, and their counsel, on how the Commission's audit policies and procedures have facilitated or hindered committees' productive interaction with the agency and substantial compliance with the Act.

On behalf of the Commission,

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–01021 Filed 1–19–23; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL TRADE COMMISSION

[File No. 221 0026]

Prudential Security, Inc., et al; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of

Agreement Containing Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order embodied in the consent agreement that would settle these allegations.

DATES: Comments must be received on or before February 21, 2023.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''Prudential Security, Inc., et al; File No. 221 0026'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex Q), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Austin Heyroth (202–326–3011), Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis of Agreement Containing Consent Order to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 21, 2023. Write ''Prudential Security, Inc., et al; File No. 221 0026'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be delayed. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''In the Matter of Prudential Security, Inc., et al; File No. 221 0026'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex Q), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else'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 your comment does not include 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 competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at *https://www.ftc.gov* to read this document and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before February 21, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''consent agreement'') with Prudential Security, Inc. (''Prudential Security''); Prudential Command Inc. (''Prudential Command''); Greg Wier, the co-owner, President, and Director of these companies; and Matthew Keywell, the co-owner, Secretary, and Treasurer of these companies (collectively ''Respondents''). Prudential Security, Inc. and Prudential Command Inc. (collectively ''Prudential'') are Michigan corporations that provided security guard services to clients in several states, including Michigan, Tennessee, Ohio, South Carolina, and Pennsylvania.[1]

The consent agreement settles charges that Respondents violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by imposing post-employment covenants not to compete (''Non-Compete Restrictions'') on their employees. A Non-Compete Restriction is a term that, after a worker has ceased working for an employer, restricts the worker's freedom to accept employment with competing businesses, form a competing business, or otherwise compete with the employer. As explained below, the proposed complaint alleges that Respondents' conduct constitutes an unfair method of competition because it is restrictive, coercive, and exploitative and negatively affects competitive conditions. The complaint further alleges that Respondents' imposition of Non-Compete Restrictions took advantage of the unequal bargaining

[1] Respondents sold and transferred the bulk of Prudential's security guard assets, including security guard employees, to another company in August 2022. As described below, the transferred employees are not subject to Non-Compete Restrictions with the buyer, and the buyer is not charged in the complaint.

power between Respondents and their employees, particularly low-wage security guard employees, and thus reduced workers' job mobility, limited competition for workers' services, and ultimately deprived workers of higher wages and more favorable working conditions.

As further described below, the consent agreement contains a proposed order remedying the Section 5 violation alleged in the complaint. Under the terms of the proposed order, Respondents—including any companies that Greg Wier and Matthew Keywell control or come to control in the future—must cease and desist from entering, maintaining, enforcing, or attempting to enforce any Non-Compete Restriction, or communicating to any employee or other employer that the employee is subject to a Non-Compete Restriction.

The proposed order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the consent agreement and the comments received and will decide whether it should make the proposed order final or take other appropriate action.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the complaint, the consent agreement, or the proposed order, and the analysis does not modify their terms in any way.

II. The Complaint

The complaint includes the following allegations:

Prior to August 2022, Prudential employed security guards who worked at facilities in several states. These security guards, who accounted for the vast majority of Prudential's workforce, typically earned hourly wages equal to or slightly above the minimum wage. Prudential imposed Non-Compete Restrictions on each of these security guard employees as a condition of employment. Among other limitations, these Non-Compete Restrictions require the following:

- For two years after ceasing to work for Prudential, the employee must not work for any competing business within 100 miles of the employee's primary jobsite.
- The employee also must not join, form, or ''in any manner whatsoever help'' any competing business for two years within 100 miles of the employee's primary jobsite.
- The employee must pay $100,000 to Prudential as ''liquidated damages'' if the employee violates the terms of the Non-Compete Restriction.

Respondents' security guard employees were not permitted to negotiate the terms of the Non-Compete Restrictions and very few, if any, security guards consulted an attorney before the restrictions were imposed by Respondents. The security guard employees were not offered any monetary compensation or job security in exchange for being subject to the Non-Compete Restrictions.

The complaint alleges that Respondents repeatedly and actively relied on these Non-Compete Restrictions to discourage, delay, and prevent current and former security guard employees from seeking or accepting alternative employment. Respondents threatened individual employees with enforcement of their Non-Compete Restrictions, including the liquidated damages provision, to discourage them from accepting positions with competing employers. Respondents also contacted competing security guard companies to notify them of the Non-Compete Restrictions and to threaten lawsuits if the competitor hired Respondents' former employees. And Respondents ultimately filed multiple lawsuits seeking to enforce Non-Compete Restrictions against individual employees and related lawsuits against competing security guard companies.

For example, in 2018, a competing security guard company extended job offers to a number of security guards who worked for Prudential Security, promising significantly higher wages and more favorable working conditions. The security guards left Prudential Security and joined the competing company. Upon learning this, Prudential Security sued several of the security guards to prevent them from continuing employment with the competitor. After months of litigation, a Michigan state court dismissed the suit, finding that there was ''nothing in the employment, training or knowledge of the individual defendants which would warrant enforcement of a non-compete under the circumstances.'' [2] The court also concluded that the Non-Compete Restrictions' two-year duration and 100-mile geographic scope were also unreasonable and unenforceable as a matter of state law. Respondents nevertheless continued to impose Non-Compete Restrictions on all incoming security guard employees that were identical to the restrictions the Michigan court had determined to be unreasonable and unenforceable.

Similarly, in 2019, a competing security guard company hired a former Prudential Security employee who had become subject to a Non-Compete Restriction upon joining Prudential Security as a security guard. Prudential Security sued the former employee and the competing company to enforce the Non-Compete Restriction, seeking injunctive and monetary relief. As a result, the competing company terminated the former Prudential Security employee.

In August 2022, Respondents sold their security guard assets to another security guard company. At present, Respondents do not provide security guard services. Former Prudential security guards who now work for the buyer of the assets are not subject to Non-Compete Restrictions with the buyer. But approximately 1,500 of Respondents' former employees are still subject to Non-Compete Restrictions with Respondents. In addition, Respondents Greg Wier and Matthew Keywell have other business interests and may launch new businesses in the future.

III. Legal Analysis

Section 5 of the FTC Act prohibits ''unfair methods of competition.'' [3] Congress empowered the FTC to enforce section 5's prohibition on ''unfair methods of competition'' to ensure that the antitrust laws could adapt to changing circumstances and to address the full range of practices that may undermine competition and the competitive process.[4] The Commission and federal courts have historically interpreted Section 5 to prohibit conduct that contradicts the policies or the spirit of the antitrust laws, even if that conduct would not violate the Sherman or Clayton Acts.[5]

[2] *Prudential Security, Inc.* v. *Pack,* No. 18–015809–CB (Mich. Cir. Ct. Dec. 13, 2018).

[3] 15 U.S.C. 45(a).

[4] *E.g., Atl. Refining Co.* v. *FTC,* 381 U.S. 357, 367 (1965) (''The Congress intentionally left development of the term 'unfair' to the Commission rather than attempting to define the many and variable unfair practices which prevail in commerce.'') (internal citations and quotation marks omitted); *see also* Fed. Trade Comm'n, *Statement of the Commission On the Withdrawal of the Statement of Enforcement Principles Regarding 'Unfair Methods of Competition' Under Section 5 of the FTC Act,* at 3 (July 9, 2021) (''[T]he FTC Act reflects a basic tradeoff: Section 5 grants the Commission extensive authority to shape doctrine and reach conduct not otherwise prohibited by the Sherman Act, but provides a more limited set of remedies.'').

[5] *E.g., FTC* v. *Motion Picture Advert. Serv. Co.,* 344 U.S. 392, 394–95 (1953) (''The 'Unfair methods of competition', which are condemned by [Section] 5(a) of the [FTC] Act, are not confined to those that were illegal at common law or that were

Continued

The Commission's recent Section 5 Policy Statement describes the most significant general principles concerning whether conduct is an unfair method of competition.[6] A person violates section 5 by (1) engaging in a method of competition (2) that is unfair—*i.e.,* conduct that ''goes beyond competition on the merits.'' [7] A method of competition is ''conduct undertaken by an actor in the marketplace'' that implicates competition, whether directly or indirectly.[8] Conduct is unfair if (a) it is ''coercive, exploitative, collusive, abusive, deceptive, predatory,'' ''involve[s] the use of economic power of a similar nature,'' or is ''otherwise restrictive and exclusionary,'' and (b) ''tend[s] to negatively affect competitive conditions'' for ''consumers, workers, or other market participants''—for example by impairing the opportunities of market participants, interfering with the normal mechanisms of competition, limiting choice, reducing output, reducing innovation, or reducing competition between rivals.[9] The two parts of this test for unfairness ''are weighed according to a sliding scale'': where there is strong evidence for one part of the test, ''less may be necessary'' to satisfy the other part.[10] In appropriate circumstances, conduct may be condemned under Section 5 without defining a relevant market, proving market power, or showing harm through a rule of reason analysis.[11] In addition, the Commission may consider any asserted justifications for a particular practice.[12] Any such inquiry would focus on ''[t]he nature of the harm'' caused by the method of competition: ''the more facially unfair and injurious the harm, the less likely it is to be overcome by a countervailing justification of any kind.'' [13] Unlike ''a net efficiencies test or a numerical cost-benefit analysis,'' this analysis examines whether ''purported benefits of the practice'' redound to the benefit of other market participants rather than the respondent.[14] Established limits on defenses and justifications under the Sherman Act ''apply in the Section 5 context as well,'' including that the justifications must be cognizable, non-pretextual, and narrowly tailored.[15]

As described below, the factual allegations in the complaint would support concluding that Respondents' use of Non-Compete Restrictions is an unfair method of competition under Section 5. First, Respondents' use of Non-Compete Restrictions is a method of competition. Respondents knowingly imposed and enforced Non-Compete Restrictions on and against their employees. By design, this conduct restricted the employment options available to affected workers and therefore implicated competition for labor. Respondents' imposition and enforcement of Non-Compete Restrictions impeded the free movement of security guard employees who sought to work elsewhere.

Second, Respondents' conduct is restrictive, exploitative, and coercive. Respondents' actions tend to restrict the opportunity of rival security guard companies to compete for the services of the affected employees. Respondents' imposition of Non-Compete Restrictions on their workers was also exploitative and coercive. Non-Compete Restrictions, by reducing workers' negotiating leverage vis-à-vis their current employers, tend to impair workers' ability to negotiate for better pay and working conditions.[16] Here according to the complaint, Respondents' security guard employees—who were all subject to Non-Compete Restrictions as a condition of employment—earned low wages, were not permitted to negotiate the terms of the Non-Compete Restrictions, and did not consult attorneys before joining Prudential. By contrast, Respondents were repeat players, experienced in using and enforcing Non-Compete Restrictions. These allegations support a finding of considerable imbalances in economic power and bargaining power at the time that the employees became subject to the Non-Compete Restrictions. This power imbalance is further evidenced by the fact that the employees did not receive any money, job security, or other compensation in exchange for being subject to the Non-Compete Restrictions.

Respondents' enforcement of the Non-Compete Restrictions, as alleged in the complaint, was likewise exploitative and coercive. As described above, Respondents enforced Non-Compete Restrictions against security guards to discourage, delay, and prevent them from accepting offers of other employment. Respondents' threats and lawsuits aimed to force workers into forgoing job opportunities that offered higher pay and better working conditions as compared to Respondents' jobs. The coercive effect of these threats relied, critically, on the affected workers' relatively vulnerable economic positions. Workers subject to Respondents' enforcement actions were particularly susceptible to economic instability once they had left their prior positions: Respondents' Non-Compete Restrictions foreclosed the very job opportunities that likely would have provided the workers with the best alternatives to continued employment with Respondents—jobs in the same industry in the same broad geographic area.

Third, Respondents' use of Non-Compete Restrictions negatively affects competitive conditions. In well-functioning labor markets, workers compete to attract employers and employers compete to attract workers. For example, workers may attract potential employers by offering different skills and experience levels. Employers may attract potential employees by offering higher wages, better hours, a more convenient job location, more autonomy, more benefits, or a different set of job responsibilities. Because factors beyond price (wages) are important to both workers and employers in the job context, labor markets are ''matching markets'' as opposed to ''commodity markets.'' [17]

condemned by the Sherman Act. Congress advisedly left the concept flexible to be defined with particularity by the myriad of cases from the field of business.'') (internal citations omitted); *Fashion Originators' Guild of Am.* v. *FTC,* 312 U.S. 457, 463 (1941) (Commission may ''suppress'' conduct whose ''purpose and practice . . . runs counter to the public policy declared in the Sherman and Clayton Acts''); *FTC* v. *Brown Shoe,* 384 U.S. 316, 321 (1966) (Commission's power reaches ''practices which conflict with the basic policies of the Sherman and Clayton Acts even though such practices may not actually violate these laws''); *E.I. du Pont de Nemours & Co.* v. *FTC (Ethyl),* 729 F.2d 128, 136–37 (2d Cir. 1984) (Commission may bar ''conduct which, although not a violation of the letter of the antitrust laws, is close to a violation or is contrary to their spirit''); *see also FTC* v. *Ind. Fed'n of Dentists,* 476 U.S. 447, 454 (1986); *FTC* v. *Sperry & Hutchinson Co.,* 405 U.S. 233, 244 (1972); *FTC* v. *R.F. Keppel & Bros., Inc.,* 291 U.S. 304, 309–10 (1934).

[6] Fed. Trade Comm'n, *Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act,* Commission File No. P221202 (Nov. 10, 2022).

[7] *Id.* at 8–10.

[8] *Id.* at 8.

[9] *Id.* 8–10.

[10] *Id.* at 9.

[11] *Id.* at 10.

[12] *Id.* at 10–12 (''There is limited caselaw on what, if any, justifications may be cognizable in a standalone Section 5 unfair methods of competition case, and some courts have declined to consider justifications altogether.'').

[13] *Id.* at 11.

[14] *Id.*

[15] *Id.* at 11–12.

[16] *See, e.g.,* Dep't of the Treasury, Report, *Non-compete Contracts: Economic Effects and Policy Implications* (Mar. 2016) at 10, *https://home.treasury.gov/system/files/226/Non_Compete_Contracts_Econimic_Effects_and_Policy_Implications_MAR2016.pdf* (''When workers are legally prevented from accepting competitors' offers, those workers have less leverage in wage negotiations [with their current employer.]'').

[17] *See generally* David H. Autor, *Wiring the Labor Market,* 15 J. of Econ. Perspectives 25–40 (2001);

In general, in matching markets, higher-quality matches tend to result when both sides—here, workers and employers—have more options available to them.[18] Having more options on both sides could, for example, allow for matching workers with jobs in which their specific skills are more valued, the hours demanded better fit their availability, or their commutes are shorter and more efficient. Matches could also be better in that various employers' compensation packages, which differ in terms of pay and benefits, are coupled with employees who value those offerings more and will, for example, tend to stay at those jobs longer as a result. Competition for labor allows for job mobility and benefits workers by allowing them to accept new employment, create or join new businesses, negotiate better terms in their current jobs, and generally pursue career advancement as they see fit.[19]

By preventing workers and employers from freely choosing their preferred jobs and candidates, respectively, Non-Compete Restrictions like those used by Respondents impede and undermine competition in labor markets.[20] In the aggregate, Non-Compete Restrictions reduce competition for workers by limiting the choices of workers and rival employers. Research suggests that Non-Compete Restrictions measurably reduce worker mobility,[21] lower workers' earnings,[22] and increase racial and gender wage gaps.[23] At the individual level, a Non-Compete Restriction forces a worker who wishes to leave a job into a difficult choice: stay in the current position despite being able to receive a better job elsewhere, take a position with a competitor at the risk of being found out and sued, or leave the industry entirely. In this way, Non-Compete Restrictions tend to leave workers with fewer and lower-quality competing job options,[24] thereby reducing workers' bargaining leverage with their current employers and resulting in lower wages, slower wage growth, and less favorable working conditions.[25]

Here, as described above, Respondents' imposition and enforcement of Non-Compete Restrictions deprived Respondents' former employees of the benefits of competition, leaving them with lower wages, less favorable working conditions, and increased economic uncertainty. Respondents' use of Non-Compete Restrictions also deprived competing businesses of the benefits of competition by impairing their ability to employ workers, including workers they had already located and convinced to join.

Finally, as the complaints allege, any legitimate objectives of Respondents' use of Non-Compete Restrictions could be achieved through significantly less restrictive means, including, for example, by entering confidentiality agreements that prohibit employees and former employees from disclosing company trade secrets and other confidential information. As a Michigan state court concluded in 2019, there was ''nothing in the employment, training or knowledge of [Respondents' security guards] which would warrant enforcement of a non-compete.'' [26]

IV. Proposed Order

The proposed order seeks to remedy the unfair method of competition alleged by the Commission in its complaint and to prohibit Respondents from entering, maintaining, enforcing, or attempting to enforce any Non-Compete Restriction, or communicating to any employee or other employer that the employee is subject to a Non-Compete Restriction. These injunctive provisions, contained in Section II of the proposed order,[27] are intended to ensure that Respondents' current, former, and future employees will be free to seek employment, start their own businesses, or otherwise compete with Respondents upon leaving Respondents' companies. These provisions would apply to any business that Respondents Greg Wier and Matthew Keywell own or control in the future and would also include any future business of Prudential.

Paragraph III.A of the proposed order requires Respondents to promptly send a letter describing the Commission's actions to each employee who is or was party to a Non-Compete Restriction at any point during the last two years.[28] The letters state that Respondents will not enforce any Non-Compete Restriction against the recipients and clarify that Respondents cannot prevent the recipients from ''seeking or accepting a job with any company or person,'' ''running your own business,'' or ''otherwise competing with companies that provide security guard services.'' [29] The restrictions in the proposed order apply to Respondents Greg Wier and Matthew Keywell, the co-owners and only officers of Prudential. Mr. Wier and Mr. Keywell continue to control other businesses that employ workers and may, in the future, come to control other business ventures. For these reasons, the proposed order's definition of ''Respondents'' extends to any companies or businesses that Mr. Wier or Mr. Keywell control.[30]

Paragraph III.B requires Respondents, for the next 10 years, to provide a clear and conspicuous notice to any new employees upon hire informing them that they may ''seek or accept a job with any company or person—even if they compete with [Respondents],'' ''run your own business—even if it competes with [Respondents],'' or ''compete with [Respondents] at any time following your employment.'' [31] Paragraph IV.A requires Respondents to void and nullify all of their existing Non-Compete Restrictions without penalizing the affected employees.[32] In addition, Paragraph IV.B requires the Respondents to provide a copy of the complaint and order to any director, officer, or employee of a Respondent who is currently responsible for hiring and recruiting, and Paragraph IV.C requires Respondents to send the order and the complaint to any Person who

Enrico Moretti, *Local Labor Markets,* in 4b Handbook of Labor Economics 1237–1313 (2011).

[18] *See, e.g.,* Dep't of the Treasury, Report, *The State of Labor Market Competition* (Mar. 7, 2022) at 5–7, *https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf;* Dep't of the Treasury, Report, *Non-compete Contracts: Economic Effects and Policy Implications, supra* note 16, at 3–5, 22–23.

[19] *See, e.g.,* Cynthia L. Estlund, *Between Rights and Contract: Arbitration Agreements and Non-Compete Covenants As A Hybrid Form of Employment Law,* 155 U. Pa. L. Rev. 379, 407 (2006).

[20] *See, e.g.,* Dep't of the Treasury, Report, *The State of Labor Market Competition, supra* note 18, at 5–7.

[21] Matthew S. Johnson, Kurt Lavetti, & Michael Lipsitz, *The Labor Market Effects of Legal Restrictions on Worker Mobility 2* (2020), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3455381;* Evan Starr, J.J. Prescott, & Norm Bishara, *The Behavioral Effects of (Unenforceable) Contracts,* 36 J.L., Econ., & Org. 633, 652 (2020); Evan Starr, Justin Frake, & Rajshree Agarwal, *Mobility Constraint Externalities,* 30 Org. Sci. 961, 963–65, 977 (2019); Matt Marx, Deborah Strumsky, & Lee Fleming, *Mobility, Skills, and the Michigan Non-Compete Experiment,* 55 Mgmt. Sci. 875, 884 (2009).

[22] Michael Lipsitz & Evan Starr, *Low-Wage Workers and the Enforceability of Noncompete Agreements,* 68 Mgmt. Sci. 143, 144 (2021); Johnson, Lavetti, & Lipsitz, *supra* note 21.

[23] Johnson, Lavetti, & Lipsitz, *supra* note 21.

[24] *See, e.g.,* Jessica Jeffers, *The Impact of Restricting Labor Mobility on Corporate Investment and Entrepreneurship* 21–22 (Dec. 24, 2019), *https://ssrn.com/abstract=3040393.*

[25] *See, e.g.,* Johnson, Lavetti, & Lipsitz, *supra* note 21; David J. Balan, *Labor Practices Can be an Antitrust Problem Even When Labor Markets are Competitive,* CPI Antitrust Chronicle (May 2020) at 8.

[26] *Supra* note 2.

[27] Decision and Order § II.

[28] *Id.* ¶ III.A.

[29] *Id.* App'x A.

[30] Decision and Order ¶¶ I.C–E.

[31] *Id.* ¶ III.B.

[32] *Id.* ¶ IV.A.

becomes a director, officer, or employee with such responsibility.

Other paragraphs contain standard provisions regarding compliance reports, notice of changes in the Respondents, and access to documents and personnel.[33] The term of the proposed order is twenty years.[34]

By direction of the Commission, Commissioner Wilson dissenting.

April J. Tabor,

Secretary.

Dissenting Statement of Commissioner Christine S. Wilson

Today, the Commission announced that it has accepted, subject to final approval, a consent agreement with Prudential Security, Inc. The consent resolves allegations that the use of non-compete agreements in employee contracts constitutes an unfair method of competition that violates Section 5 of the FTC Act. This case, which alleges a stand-alone violation of Section 5, is one of the first to employ the approach that the recently issued Section 5 Policy Statement [1] describes. For the reasons explained below, I dissent.

One point is worth emphasizing: my vote to oppose issuance of the complaint does *not* mean that I endorse or condone the conduct of Prudential Security. The company required its security guards to sign non-compete agreements that prohibited employees from accepting employment with a competing business for two years following conclusion of their employment with Prudential. Moreover, a liquidated damages provision required employees to pay Prudential $100,000 for violations of the non-compete agreement. Based on these facts, it seems appropriate that a Michigan state court found that the non-compete agreements were unreasonable and unenforceable under state law.[2]

Instead, my vote reflects my continuing disagreement with the new Section 5 Policy Statement and its application to these facts. When it was issued, I expressed concern that the Policy Statement would be used to condemn conduct summarily as an unfair method of competition based on little more than the assignment of adjectives.[3] Unfortunately, that is the approach taken in this case.

The Complaint offers no evidence of anticompetitive effect in any relevant market. According to the Complaint, Prudential's use of non-compete agreements ''has harmed employees'' by limiting their ability to work for other firms in the security guard industry.[4] It asserts that Prudential's use of non-compete agreements is ''coercive and exploitative'' and ''tends to negatively affect competition conditions'' [5]—but it appears that those ''competition conditions'' pertain only to individual employees. Similarly, the Complaint offers only a conclusory assertion that ''[a]ny possible legitimate objectives . . . could have been achieved through significantly less restrictive means, including . . . confidentiality agreements that prohibited disclosure of any confidential information.'' [6] This assertion is unsubstantiated.

Another aspect of the case also concerns me. This enforcement action is designed not to provide effective relief but instead to signal activity with respect to non-compete agreements in the employment arena. As the Complaint describes, Prudential sold the bulk of its security guard business to another security guard company, Titan Security Group. The former Prudential security guards who now work for Titan are not subject to non-compete agreements.[7] Moreover, now that Prudential no longer provides security guard services, there is no reason for the company to seek to enforce non-compete agreements against former Prudential security guards who did not move to Titan.

I wish it were accurate to say that this case (with apologies to Shakespeare) is a tale of sound and fury, signifying nothing. Unfortunately, it has great significance: it foreshadows how the Commission will apply the new section 5 Policy Statement. Practices that three unelected bureaucrats find distasteful will be labeled with nefarious adjectives and summarily condemned, with little to no evidence of harm to competition. I fear the consequences for our economy, and for the FTC as an institution.

[FR Doc. 2023–01093 Filed 1–19–23; 8:45 am]

BILLING CODE 6750–01–P

[33] *Id.* §§ IV–VII.

[34] *Id.* § X.

[1] Fed. Trade Comm'n, Policy Statement Regarding the Scope of Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act (Nov. 10, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/p221202sec5enforcementpolicystatement_002.pdf.*

[2] Complaint ¶ 22.

[3] *See* Christine S. Wilson, Comm'r, Fed. Trade Comm'n, Dissenting Statement Regarding the ''Policy Statement Regarding the Scope of Unfair Methods of Competition Under section 5 of the Federal Trade Commission Act'' (Nov. 10, 2022), *https://www.ftc.gov/system/files/ftc_gov/pdf/P221202Section5PolicyWilsonDissentStmt.pdf.*

[4] Complaint ¶¶ 23, 25.

[5] Complaint ¶ 29.

[6] Complaint ¶ 26.

[7] Complaint ¶ 16.

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $45,257,000 for Section 8(a)(1), and $4,525,700 for Section 8(a)(2)(A).

DATES: January 20, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher M. Grengs (202–326–2612), Bureau of Competition, Office of Policy and Coordination.

Authority: 15 U.S.C. 19(a)(5).

April J. Tabor,

Secretary.

[FR Doc. 2023–00996 Filed 1–19–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 1009(d) of 5 U.S.C. 10, 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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 117–286. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–CE–23–002: Grants to Support New Investigators in Conducting Research Related to Understanding Polydrug Use Risk and Protective Factors.

Date: April 11, 2023.

Time: 8:30 a.m.–5:30 p.m., EDT.

Place: Videoconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Aisha L. Wilkes, M.P.H., Scientific Review Officer, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341, Telephone: (404) 639–6473; Email: *AWilkes@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–01012 Filed 1–19–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 1009(d) of 5 U.S.C. 10, 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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 117–286. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–RFA–CE–23–004: Research Grants for Preventing Violence and Violence Related Injury.

Date: March 28–29, 2023.

Time: 8:30 a.m.–5:30 p.m., EDT.

Place: Videoconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Aisha L. Wilkes, M.P.H., Scientific Review Officer, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341, Telephone: (404)639–6473; Email: *AWilkes@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–01010 Filed 1–19–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 1009(d) of 5 U.S.C. 10, 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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 117–286. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE23–008, Research Grants to Develop and Validate a Prognostic Tool of Mental Health Sequelae After Traumatic Brain Injury for Adolescent Patients (U01).

Date: March 14, 2023.

Time: 8:30 a.m.–5:30 p.m., EDT.

Place: Web Conference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Carlisha Gentles, PharmD, BCPS, CDCES, Scientific Review Officer, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341, Telephone: (770) 488–1504; Email: *CGentles@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2023–01011 Filed 1–19–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2899]

Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs; Draft Guidance for Industry; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice announcing the availability of a

draft guidance for industry that appeared in the **Federal Register** of November 30, 2022. In that notice, FDA requested comments on draft guidance for industry (GFI) #276 entitled ''Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs.'' The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the notice published November 30, 2022 (87 FR 73560). Submit either electronic or written comments by May 1, 2023, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–2899 for ''Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Steven Fleischer, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0809, *Steven.Fleischer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 30, 2022, FDA published a notice announcing the availability of a draft guidance for industry entitled ''Effectiveness of Anthelmintics: Specific Recommendations for Products Proposed for the Prevention of Heartworm Disease in Dogs,'' and requesting comments on the proposed GFI.

Interested persons were originally given until January 30, 2023, to comment on the document. The Agency has received a request for an extension of the comment period. The request stated that an additional 90 days would allow interested parties to thoroughly consider the request for input. FDA has considered the request and is extending the comment period for the request for comments for 90 days, until May 1, 2023. The Agency believes that a 90-day extension allows adequate time for interested persons to submit comments.

Dated: January 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–01031 Filed 1–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1384]

Mark Godding: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Mark Godding for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Godding was convicted of one felony count under Federal law for Introducing or Delivering for Introduction a Misbranded Drug in Interstate Commerce. The factual basis supporting Mr. Godding's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Godding was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of

September 29, 2022 (30 days after receipt of the notice), Mr. Godding had not responded. Mr. Godding's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable January 20, 2023.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4144), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On May 20, 2022, Mr. Godding was convicted, as defined in section 306(l)(1) of the FD&C Act, in the U.S. District Court for the District of Colorado, when the court entered judgment against him, after his plea of guilty, for the offense of Introducing or Delivering for Introduction a Misbranded Drug in Interstate Commerce in violation of 21 U.S.C. 331(a) and 333(a)(2). FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the factual basis of the Plea Agreement in Mr. Godding's case, filed on January 26, 2022, and as set forth in the notice of proposed debarment, along with Linda Godding, he purchased the business Mighty Stacks, LLC in December 2016. Mighty Stacks, LLC did business as Blue Brain Boost and sold products through its website, *bluebrainboost.com.* Both before and after his acquisition of Mighty Stacks, LLC, the business sold products identified by FDA as unapproved new drugs and misbranded drugs. Mr. Godding leased warehouse space in Fort Collins, Colorado, where he stored and from which he shipped his products.

The Blue Brain Boost website identified all of its products as ''nootropics,'' a term given by those in the health supplements industry to chemicals often advertised as ''smart drugs'' and ''cognitive enhancers.'' The Blue Brain Boost website provided information regarding its products that rendered those products ''drugs'' either because the website identified the products as ''articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man,'' as ''articles (other than food) intended to affect the structure or any function of the body of man,'' or both (21 U.S.C. 321(g)(1)(B) and (C)). Mr. Godding, along with Linda Godding, purchased these nootropic products, identified by FDA as unapproved new drugs and misbranded drugs, from China and repackaged and distributed the products as supplements for consumer use.

Mr. Godding, along with Linda Godding, used e-commerce platforms to locate suppliers of the products. Mr. Godding had no knowledge of these products' manufacturers' practices, where or how the products were manufactured, the safety of those products, or that the products were what the suppliers alleged them to be, with the minor exception that Mr. Godding in rare cases had the products tested, sometimes after receiving safety complaints from his customers. The products Mr. Godding purchased and imported from foreign suppliers, predominantly from China, included tianeptine sodium powder, adrafinil crystalline powder, aniracetam crystalline powder, nicotine USP solution in 100% glycol, IDRA–21, methylene blue solution, noopept crystalline powder, oxiracetam, phenibut hydrocholoride crystalline powder, coluracetam chrystalline powder, phenylpiracetam crystalline powder, pramiracetam, and sunifiram.

Mr. Godding knew that he was importing these products in violation of law. Mr. Godding, and Linda Godding, were in receipt of numerous Notice of FDA Action forms placing holds, noting detentions, or demanding return of nootropic products imported to the United States to be delivered to Mr. Godding and Linda Godding in Colorado for their clients. These notices informed Mr. Godding that the same nootropic products sold through Blue Brain Boost ''are subject to refusal pursuant to the FD&C Act, Public Health Service Act, or other related acts in that they appear to be adulterated, misbranded or otherwise in violation as indicated.'' Copies of these notices were located in Linda Godding's desk during an execution of a search warrant at the Godding's warehouse.

Because Mr. Godding and Linda Godding knew it was illegal to import these products into the United States, the Goddings worked with international suppliers to conceal from Customs and Border Protection the true nature of these shipments. For example, Linda Godding negotiated with Chinese suppliers to have the products shipped to Blue Brain Boost from U.S. warehouses rather than direct from China. It is common for foreign suppliers of illegal goods to ship their products to their own warehouses in the United States, identifying the products as intended for research or other authorized purposes to avoid Customs.

Linda Godding was also aware that foreign suppliers mislabeled products shipped to Blue Brain Boost to avoid Customs. For example, on November 7, 2017, Linda Godding emailed a testing laboratory representative to let him know that she was sending him 3 grams of tianeptine sodium for testing as she did not want to pay the supplier until she had the test results. She noted in her email that the product was coming to the laboratory with a different sender name and not from Blue Brain Boost, and labeled as, ''Alpha GPC to get it thru customs.'' Linda Godding also received emails from Chinese suppliers explaining how the suppliers changed the product name for easy shipment and customs clearance.

After purchasing and importing these products from foreign suppliers, Mr. Godding did, along with Linda Godding, repackage or caused others to repackage the products into Blue Brain Boost labeled containers intended for consumer use and Mr. Godding shipped them to customers using a shipping program. The Blue Brain Boost products were misbranded because they were drugs sold without any directions for use.

Undercover Federal agents from the FDA's Office of Criminal Investigations made undercover purchases from the Blue Brain Boost online store that were shipped, interstate, to Kansas from Colorado. In one of those purchases, the agents purchased 5 grams of ''Tianeptine Sodium Powder,'' which arrived in a blue container marked only, ''Tianeptine Sodium >99%'' with the Blue Brain logo on one label on the lid and a second label on the side of the bottle reading only, ''5 gm'' and ''18052408.'' There were no directions for use in the labels. During the execution of a search warrant at the Godding's warehouse and office, Federal agents found a form from a Chinese tianeptine sodium supplier

signed by Mr. Godding that acknowledged: ''The customer agrees that the Tianeptine Sodium bought or will buy from [the company in China] is not a dietary supplement ingredient defined under section 201(ff) of the Federal Food, Drug, and Cosmetic Act (The Act) (21 U.S.C. 321(ff)), and shall not use for products marketed as a dietary supplement (*sic*).''

As a result of this conviction, FDA sent Mr. Godding, by certified mail, on August 23, 2022, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Godding's felony conviction under Federal law for Introducing or Delivering for Introduction a Misbranded Drug in Interstate Commerce in violation of 21 U.S.C. 331(a) and 333(a)(2) was for conduct relating to the importation into the United States of any drug or controlled substance because he illegally imported unapproved new drugs and misbranded drugs from foreign suppliers that he repackaged and sold to customers throughout the United States. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Godding's offense and concluded that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Godding of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Godding received the proposal and notice of opportunity for a hearing on August 30, 2022. Mr. Godding failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Mark Godding has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Godding is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Mr. Godding is a prohibited act.

Any application by Mr. Godding for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2022–N–1384 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: January 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–00999 Filed 1–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–2395]

Mpox: Development of Drugs and Biological Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Mpox: Development of Drugs and Biological Products.'' FDA is issuing this guidance to support sponsors in their development of drugs and biological products for mpox.

DATES: Submit either electronic or written comments on the draft guidance by March 21, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–2395 for ''Mpox: Development of Drugs and Biological Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states

''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Kimberly Struble, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Building 22, Room 6374, Silver Spring, MD 20993, 301–796–1500.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Mpox: Development of Drugs and Biological Products.'' FDA is issuing this guidance to support sponsors in their development of drugs and biological products for mpox. This guidance provides nonclinical, virology, and clinical considerations for mpox drug and biological product development programs, with a focus on recommendations to support initiation of clinical trials. Preventive vaccines are not addressed in this guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Mpox: Development of Drugs and Biological Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 for investigational new drug applications and clinical trials have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 for new drug application submissions have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 for biologic new drug applications have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov.*

Dated: January 17, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–01029 Filed 1–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1398]

Linda Godding: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Linda Godding for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Ms. Godding was convicted of one felony count under Federal law for introducing or delivering for introduction a misbranded drug in interstate commerce. The factual basis supporting Ms. Godding's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Ms. Godding was given notice of the proposed debarment and was given an opportunity to request a hearing to show why she should not be debarred. As of September 29, 2022 (30 days after receipt of the notice), Ms. Godding had not responded. Ms. Godding's failure to respond and request a hearing constitutes a waiver of her right to a hearing concerning this matter.

DATES: This order is applicable January 20, 2023.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4144), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On June 10, 2022, Ms. Godding was convicted, as defined in section 306(l)(1) of the FD&C Act, in the U.S. District Court for the District of Colorado, when the court entered judgment against her, after her plea of guilty, for the offense of introducing or delivering for introduction a misbranded drug in interstate commerce in violation of 21 U.S.C. 331(a) and 333(a)(2). FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: as contained in the factual basis of the Plea Agreement in Ms. Godding's case, filed on January 27, 2022, and as set forth in the notice of proposed debarment, along with Mark Godding, she purchased the business Mighty Stacks, LLC in December 2016. Mighty Stacks, LLC did business as Blue Brain Boost and sold products through its website, *bluebrainboost.com.* Both before and after her acquisition of Mighty Stacks, LLC, the business sold products identified by FDA as unapproved new drugs and misbranded drugs. Ms. Godding leased warehouse space in Fort Collins, Colorado, where she stored and from which she shipped her products.

The Blue Brain Boost website identified all its products as ''nootropics,'' a term given by those in the health supplements industry to chemicals often advertised as ''smart drugs'' and ''cognitive enhancers.'' The Blue Brain Boost website provided information regarding its products that rendered those products ''drugs'' either because the website identified the products as ''articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man,'' as ''articles (other than food) intended to affect the structure or any function of the body of man,'' or both (21 U.S.C. 321(g)(1)(B) and (C)). Ms. Godding, along with Mark Godding, purchased these nootropic products, identified by FDA as unapproved new drugs and misbranded drugs, from China and repackaged and distributed the products as supplements for consumer use.

Ms. Godding, along with Mark Godding, used e-commerce platforms to locate suppliers of the products. Ms. Godding had no knowledge of these products' manufacturers' practices, where or how the products were manufactured, the safety of those products, or that the products were what the suppliers alleged them to be, with the minor exception that Ms. Godding in rare cases had the products tested, sometimes after receiving safety complaints from her customers. The products Ms. Godding purchased and imported from foreign suppliers, predominantly from China, included, tianeptine sodium powder, adrafinil crystalline powder, aniracetam crystalline powder, nicotine USP solution in 100% glycol, IDRA–21, methylene blue solution, noopept crystalline powder, oxiracetam, phenibut hydrocholoride crystalline powder, coluracetam chrystalline powder, phenylpiracetam crystalline powder, pramiracetam, and sunifiram.

Ms. Godding knew that she was importing these products in violation of law. Ms. Godding, and Mark Godding, were in receipt of numerous Notice of FDA Action forms placing holds, noting detentions, or demanding return of nootropic products imported to the United States to be delivered to Ms. Godding and Mark Godding in Colorado for their clients. These notices informed Ms. Godding that the same nootropic products sold through Blue Brain Boost ''are subject to refusal pursuant to the FD&C Act, Public Health Service Act, or other related acts in that they appear to be adulterated, misbranded or otherwise in violation as indicated.'' Copies of these notices were located in Ms. Godding's desk during an execution of a search warrant at the Godding's warehouse.

Because Ms. Godding and Mark Godding knew it was illegal to import these products into the United States, the Goddings worked with international suppliers to conceal from Customs and Border Protection the true nature of these shipments. For example, Ms. Godding negotiated with Chinese suppliers to have the products shipped to Blue Brain Boost from U.S. warehouses rather than direct from China. It is common for foreign suppliers of illegal goods to ship their products to their own warehouses in the United States, identifying the products as intended for research or other authorized purposes to avoid Customs. Ms. Godding was also aware that foreign suppliers mislabeled products shipped to Blue Brain Boost to avoid Customs.

For example, on November 7, 2017, Ms. Godding emailed a testing laboratory representative to let him know that she was sending him 3 grams of tianeptine sodium for testing as she did not want to pay the supplier until she had the test results. She noted in her email that the product was coming to the laboratory with a different sender name and not from Blue Brain Boost, and labeled as, ''Alpha GPC to get it thru customs.'' Ms. Godding also received emails from Chinese suppliers explaining how the suppliers changed the product name for easy shipment and customs clearance.

After purchasing and importing these products from foreign suppliers, Ms. Godding did, along with Mark Godding, repackage or caused others to repackage the products into Blue Brain Boost labeled containers intended for consumer use and Ms. Godding shipped them to customers using a shipping program. The Blue Brain Boost products were misbranded because they were drugs sold without any directions for use.

Undercover Federal agents from FDA's Office of Criminal Investigations (OCI) made undercover purchases from the Blue Brain Boost online store that were shipped, interstate, to Kansas from Colorado. In one of those purchases, the agents purchased 5 grams of ''Tianeptine Sodium Powder'' which arrived in a blue container marked only, ''Tianeptine Sodium >99%'' with the Blue Brain logo on one label on the on the lid and a second label on the side of the bottle reading only, ''5 gm'' and ''18052408.'' There were no directions for use in the labels. During the execution of a search warrant at the Godding's warehouse and office, Federal agents found a form from a Chinese tianeptine sodium supplier signed by Mark Godding which acknowledged: ''The customer agrees that the Tianeptine Sodium bought or will buy from [the company in China] is not a dietary supplement ingredient defined under section 201(ff) of the Federal Food, Drug, and Cosmetic Act (The Act) (21 U.S.C. 321(ff)), and shall not use for products marketed as a dietary supplement (*sic*).''

As a result of this conviction, FDA sent Ms. Godding, by certified mail, on August 23, 2022, a notice proposing to debar her for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Ms. Godding's felony conviction under Federal law for introducing or delivering for introduction a misbranded drug in interstate commerce in violation of sections 331(a) and 333(a)(2) of the FD&C Act, was for conduct relating to the importation into the United States of any drug or controlled substance because she illegally imported unapproved new drugs and misbranded drugs from foreign suppliers which she repackaged and sold to customers throughout the United States. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Ms. Godding's offense and concluded

that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Ms. Godding of the proposed debarment and offered her an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Ms. Godding received the proposal and notice of opportunity for a hearing on August 30, 2022. Ms. Godding failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Ms. Linda Godding has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Ms. Godding is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Ms. Godding is a prohibited act.

Any application by Ms. Godding for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2022–N–1398 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: January 12, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–00997 Filed 1–19–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, January 24, 2023, 12:00 p.m. to January 24, 2023, 4:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852, which was published in the **Federal Register** on December 30, 2022, FR Doc 2022–28446, 87 FR 80554.

This notice is being amended to change the meeting date from January 24, 2023, to February 2, 2023. Meeting location and time remain the same. The meeting is closed to the public.

Dated: January 13, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–01018 Filed 1–19–23; 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: Small Cell Lung Cancer Subtyping Using Plasma Cell-Free Nucleosomes

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI), an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive, sublicensable patent license to Yissum Research and Development (''Yissum''), the technology transfer company of the Hebrew University of Jerusalem, a non-profit research institution located in Jerusalem, Israel for NCI's rights to the patent applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

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 February 6, 2023 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive patent license should be directed to: Michaela McCrary, Ph.D., Licensing and Patenting Manager, NCI Technology Transfer Center, at: Email: *michaela.mccrary@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

The following and all continuing U.S. and foreign patents/patent applications thereof are the intellectual properties to be licensed under the prospective agreement to Yissum: United States Provisional Patent Application No. 63/342,763, filed May 17, 2022 and entitled ''SMALL CELL LUNG CANCER SUBTYPING USING PLASMA CELL–FREE NUCELOSOMES'' [HHS Reference No. E–172–2022–0–US–01].

The patent rights in these inventions have been assigned to the Government of the United States of America and Yissum. The prospective license will be for the purpose of consolidating the patent rights to Yissum, the co-owners of said rights, for commercial development and marketing. Consolidation of these co-owned rights is intended to expedite development of the invention, consistent with the goals of the Bayh-Dole Act codified as 35 U.S.C. 200–212.

The prospective patent license territory will be worldwide, exclusive, and may be limited to those fields of use commensurate in scope with the patent rights. It will be sublicensable, and any sublicenses granted by Yissum will be subject to the provisions of 37 CFR part 401 and 404.

This technology discloses a non-invasive method to molecularly subtype SCLC from plasma samples using chromatin immunoprecipitation of cell-free nucleosomes carrying active chromatin modification followed by sequencing (cfChIP–seq).

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will include terms for the sharing of royalty income with NCI from commercial sublicenses of the patent rights. 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.

Complete applications for a license that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent license. 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 in 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: January 13, 2023.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2023–01019 Filed 1–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Evaluation of the Enhancing Diversity of the NIH-Funded Workforce Program (National Institute of General Medical Sciences)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute of General Medical Sciences (NIGMS) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Alison Gammie, Director, Division of Training, Workforce Development, and Diversity, NIGMS, 45 Center Drive, Room 2AS43J, Bethesda, MD 20892, or call non-toll-free number (301) 496–7301 or Email your request, including your address to: *alison.gammie@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Evaluation of the Enhancing the Diversity of the NIH-funded Workforce Program Consortium (DPC), 0925–0747, 06/30/2024, EXTENSION, National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH).

Need and Use of Information Collection: This request is for an Extension of a currently approved collection. The goal of the DPC is to address a unique and compelling need identified by NIH, namely to enhance the diversity of well-trained biomedical research scientists who can successfully compete for NIH research funding and/or otherwise contribute to the NIH-funded scientific workforce. The DPC is a national collaborative through which awardee institutions, in partnership with NIH, aim to enhance diversity in the biomedical research workforce through the development, implementation, assessment and dissemination of innovative and effective approaches to: (a) student outreach, engagement, training, and mentoring, (b) faculty development, and (c) institutional research training infrastructure. The Coordination and Evaluation Center (CEC) will evaluate the efficacy of the training and mentoring approaches implemented across a variety of contexts and populations and will disseminate information to the broader research community. The planned consortium-wide data collection and evaluation will provide comprehensive information about the multi-dimensional factors (individual, institutional, and faculty/mentor) that influence student and faculty success, professional development, and persistence within biomedical research career paths across a variety of contexts. The planned data collection, and the resulting findings, is projected to have a sustained, transformative effect on biomedical research training and mentoring nationwide.

OMB approval is requested for an extension of 13 months beyond the currently approved collection, until June 2024. There are no costs to respondents other than their time. The total estimated annualized burden hours are 11,730.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Student Annual Follow-up survey (Attachment 13).	Non-BUILD Student and BUILD student.	15,000	1	45/60	11,250
BUILD Institutional Research & Program Data Requests (Attachment 19).	Personnel and Administrators at BUILD Institutions.	10	3	16	480
Total			15,030		11,730

Dated: January 13, 2023.

David N. Bochner,

Project Clearance Liaison, National Institute of General Medical Sciences, National Institutes of Health.

[FR Doc. 2023–00998 Filed 1–19–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational 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 cooperative agreement applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the cooperative agreement applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; NCATS CTSA UM1 Review Special Emphasis Panel.

Date: February 21, 2023.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences, National Institutes of Health, 6701 Democracy Boulevard, Room 1037, Bethesda, MD 20892, (301) 435–0813, *henriquv@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 13, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–01017 Filed 1–19–23; 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: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: SAMHSA's Publications and Digital Products Website Registration Surveys (OMB No. 0930–0313)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting OMB approval for a revision of SAMHSA's Publications and Digital Products website Registration Survey (OMB No. 0930–0313). SAMHSA is authorized under section 501(d)(16) of the Public Health Service Act (42 U.S.C. 290aa(d)(16)) to develop and distribute materials for the prevention, treatment, and recovery from mental and substance use disorders. To improve customer service and lessen the burden on the public to locate and obtain these materials, SAMHSA has developed a website that includes more than 500 free publications from SAMHSA and its component Agencies. These products are available to the public for ordering and download. When a member of the public chooses to order hard-copy publications, it is necessary for SAMHSA to collect certain customer information in order to fulfill the request. To further lessen the burden on the public and provide the level of customer service that the public has come to expect from product websites, SAMHSA has developed a voluntary registration process for its publication website that allows customers to create accounts. Through these accounts, SAMHSA customers are able to access their order histories and save their shipping addresses. During the website registration process, SAMHSA will also ask customers to provide optional demographic information that helps SAMHSA to evaluate the use and distribution of its publications and improve services to the public.

SAMHSA employs a web-based form for information collection to avoid duplication and unnecessary burden on customers who register for an account. Customer information is submitted electronically via web forms on the samhsa.gov domain. Customers can submit the web forms at their leisure or call SAMHSA's toll-free Call Center and an information specialist will submit the forms on their behalf. The electronic collection of information reduces the burden on the respondent and streamlines the data-capturing process. The following revisions were made to the SAMHSA Publications and Digital Products website Registration Survey:

- Revision of the SAMHSA Publications website Registration Survey Questions
- Addition of a SAMHSA Main Site Survey version
- Addition of a SAMHSA Store Survey version

SAMHSA estimates the burden of this information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Website Registration Survey	21,082	1	21,082	.033 (2 min.)	696

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.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–01074 Filed 1–19–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Project: Fast Track Generic Clearance for the Collection of Qualitative Feedback on the Substance Abuse and Mental Health Services Administration (SAMHSA) Service Delivery

Executive Order 12862 directs federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. As outlined in Memorandum M–11–26, the Office of Management and Budget (OMB) worked with agencies to create a Fast Track process to allow agencies to obtain timely feedback on service delivery while ensuring that the information collected is useful and minimally burdensome for the public, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary to enable SAMHSA to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with SAMHSA's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services.

These collections will allow for ongoing, collaborative and actionable communications between SAMHSA and its customers and stakeholders. They also allow feedback to contribute directly to the improvement of program management. Per Memorandum M–11–26, information collection requests submitted under this Fast Track Generic will be considered approved unless OMB notifies SAMHSA otherwise within five days. Type of respondent; frequency (annual, quarterly, monthly, etc.); and the affected public (individuals, public or private businesses, state or local governments, etc.).

A variety of instruments and platforms will be used to collect information from respondents. The annual burden hours requested (87,500) are based on the number of collections we expect to conduct over the requested period for this clearance.

The estimated annual hour burden is as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Type of collection	Number of respondents	Response per respondent	Hours per response	Total hours
In-person surveys, online surveys, telephone surveys, in-person observation/testing, interviews	75,000	1	0.50	37,500
Focus groups	10,000	1	2	20,000
Self-administered questionnaires, customer comment cards, interactive voice surveys	10,000	1	0.50	5,000
Unspecified collection formats	25,000	1	1	25,000
Totals	120,000			87,500

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.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–01071 Filed 1–19–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Voluntary Customer Satisfaction Surveys To Implement Executive Order 12862 in the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930–0197)—Extension

SAMHSA provides significant services directly to the public, including treatment providers and State substance abuse and mental health agencies, through a range of mechanisms, including publications, training, meetings, technical assistance and websites. Many of these services are focused on information dissemination activities. The purpose of this submission is to extend the existing generic approval for such surveys.

The primary use for information gathered is to identify strengths and

weaknesses in current service provisions by SAMHSA and to make improvements that are practical and feasible. Several of the customer satisfaction surveys expected to be implemented under this approval will provide data for measurement of program effectiveness under the Government Performance and Results Act. Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to health care providers and members of the public. Focus groups may be used to develop the survey questionnaire in some instances.

The estimated annual hour burden is as follows:

Type of data collection	Number of respondents	Responses/ respondent	Hours/ response	Total hours
Focus groups	250	1	2.50	625
Self-administered, mail, telephone and e-mail surveys	89,750	1	.250	22,438
Total	90,000			23,063

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.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–01072 Filed 1–19–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–04]

30-Day Notice of Proposed Information Collection: Public Housing Operating Subsidy—Appeals, OMB Control No.: 2577–0246

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* February 21, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 20, 2022 at 87 FR 63794.

A. Overview of Information Collection

Title of Information Collection: Public Housing Operating Subsidy—Appeals.

OMB Approval Number: 2577–0246.

Type of Request: Extension without change of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: Under the operating fund rule, PHAs that elect to file an appeal of their subsidy amounts are required to meet the appeal requirements set forth in subpart G of the rule. There are four grounds of appeal in 24 CFR 990.245 under which PHAs may appeal the amount of their subsidy. They are: a streamlined appeal; an appeal for specific local conditions; an appeal for changing market conditions; and an appeal to substitute actual project cost data. To appeal the amount of subsidy on any one of these permitted bases of appeal, PHAs submit a written appeal request to HUD and appeal must cover an entire portfolio (not single projects). However, HUD has the discretion to accept appeals of less than an entire portfolio for PHAs with greater than 5,000 public housing units. Additional requirements with respect to certain appeals are covered by 24 CFR 990.250.

Respondents (i.e., affected public): State, Local or Tribal Government.

Estimated Number of Respondents: 105.

Estimated Number of Responses: 105.

Frequency of Response: 1.

Average Hours per Response: 20.

Total Estimated Burdens: 2,049.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–01059 Filed 1–19–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–05]

30-Day Notice of Proposed Information Collection: HUD Multifamily Energy Assessment; OMB Control No.: 2502–0568

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* February 21, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 30, 2022 at 87 FR 52990.

A. Overview of Information Collection

Title of Information Collection: HUD Multifamily Energy Assessment.

OMB Approval Number: 2502–0568.

Type of Request: Reinstatement, without change, of previously approved collection for which approval has expired.

Form Number: HUD–9614 and Certification of Compliance.

Description of the Need for the Information and Proposed Use: The purpose of this information collection is to assist owners of multifamily housing projects with assessing energy needs in an effort to reduce energy costs and improve energy conservation.

Respondents: Business and Other for profit.

Estimated Number of Respondents: 19,079.

Estimated Number of Responses: 19,079.

Frequency of Response: 1.

Average Hours per Response: 8 hours.

Total Estimated Burdens: 99,863.03.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(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.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–01067 Filed 1–19–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2023–N081; FXES11130600000–234–FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits, permit renewals, and/or permit amendments to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by February 21, 2023.

ADDRESSES:

Document availability and comment submission: Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* Smith, PER0123456 or ES056001):

- *Email: permitsR6ES@fws.gov.*
- *U.S. Mail:* Tom McDowell, Division Manager, Ecological Services, U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 670, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Robert Krijgsman, Recovery Permits Coordinator, Ecological Services, 303–236–4347 (phone), or *permitsR6ES@fws.gov* (email). 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: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

With some exceptions, the ESA prohibits take of listed species unless a Federal permit is issued that authorizes such take. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to take endangered or threatened species while engaging in activities that are conducted for scientific purposes that promote recovery of species or for enhancement of propagation or survival of species. These activities often include the capture and collection of species, which would result in prohibited take if a permit were not issued. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Permit No.	Applicant	Species	Location	Activity	Permit action
PER00191290	Eric Petterson, Glenwood Springs, Colorado.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	Colorado, New Mexico, and Utah.	Play taped vocalizations for surveys.	New.
ES–704930	U.S. Fish and Wildlife Service, Lakewood, Colorado.	• All federally listed plant and wildlife species occurring within the Mountain-Prairie Region.	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Purposeful take in the form of all activities that further the U.S. Fish and Wildlife Service's mission to conserve wildlife, plants, and the ecosystems upon which they depend.	Renew and amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Thomas L. McDowell,

Division Manager, Ecological Services, Mountain-Prairie Region U.S. Fish and Wildlife Service.

[FR Doc. 2023–01073 Filed 1–19–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23GB00UM20200; OMB Control Number 1028–New]

Agency Information Collection Activities; Earth Mapping Resources Initiative (Earth MRI) Competitive Cooperative Agreement Program With State Geological Surveys

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Office of the Secretary will seek Office of Management and Budget (OMB) approval of an emergency clearance for a new information collection.

DATES: Interested persons are invited to submit comments on or before March 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed emergency clearance for a new information collection should be sent to Departmental Information Collection Clearance Officer, U.S. Department of the Interior, 1849 C Street NW, Washington, DC 20240; or by email to *DOI-PRA@ios.doi.gov.* Please reference OMB Control Number ''1028–New EarthMRI'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact James Mosley by telephone at (703) 648–6312, or by email at *jmosley@usgs.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Public Law 117–58, Section 40201, ''*Earth Mapping Resources Initiative*'' contained in the Bipartisan Infrastructure Law (BIL) (November 15, 2021) authorizes and accelerates the mapping efforts of the Earth Mapping Resources Initiative (Earth MRI).

Earth MRI is a component of the Mineral Resources Program (MRP) and is a national effort to carry out the fundamental resources and mapping mission of the U.S. Geological Survey (USGS). The goal of Earth MRI is to improve our knowledge of the geologic framework in the United States and to identify areas that may have the potential to contain critical-mineral resources. Enhancement of our domestic mineral supply will decrease the Nation's reliance on foreign sources of minerals fundamental to national security and the economy.

Earth MRI was established in FY2019 in response to Executive Order 13817 (''A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals'') at a funding level of $9,600,000 (subsequently increased to $10,600,000 in FY2020). In FY2022, Earth MRI was authorized by the Infrastructure Investment and Jobs Act [otherwise known as the Bipartisan Infrastructure Law (BIL)] which directs the USGS to accelerate efforts to carry out fundamental integrated topographic, geologic, geochemical, and geophysical mapping and provide interpretation of subsurface and above-ground (mine waste) critical-mineral resources data at a funding level of $320,000,000 annually for five years (FY2022–FY2026). The BIL authorizes cooperative agreements with State geological surveys to support Earth MRI data-collection efforts and expands Earth MRI's scope by providing funding to initiate mine-waste research and assessment activities as a means to evaluate the potential for extraction of critical minerals from mine-waste materials. The data and expertise at State geological surveys is crucial to this new mine-waste critical-mineral resource mapping effort at a national scale.

The USGS developed a new competitive cooperative agreement program with the State geological surveys to support mine-waste activities authorized and funded by the BIL. State geological surveys apply for funds through an annual competitive process. The Earth MRI Mine Waste Cooperative Agreements support three goals of the USGS-Earth MRI effort: (1) building a national mine-waste inventory, (2) characterizing mine waste at sites across the nation, and (3) partnering with State geological surveys to plan Earth MRI data acquisition. Individual State projects can last for up to two years.

BIL Section 40201 stipulates that the USGS may enter into cooperative agreements with State geological surveys to accelerate the efforts of Earth MRI. Earth MRI has set the deadline to post a Notice of Funding Opportunity on *grants.gov* as January 9, 2023 and a deadline for applications to submit proposals as 3 p.m. EDT March 6, 2023. The BIL requires the USGS to collect information necessary to ensure that cooperative-agreement funds authorized by this legislation are used in accordance with the BIL and Federal assistance requirements under 2 CFR 200. Information collected by Earth MRI as part of the consolidated workplan is described below. The USGS seeks OMB approval of an emergency clearance to collect this information to manage and monitor cooperative agreement awards and comply with the BIL.

Title of Collection: Earth Mapping Resources Initiative (Earth MRI) Competitive Cooperative Agreement Program with State Geological Surveys

OMB Control Number: 1028-New.

Form Number: None.

Type of Review: Request for emergency approval of a new information collection.

Respondents/Affected Public: 25.

Responses: 73 (25 applications, 32 total six-month progress reports, and 16 final technical reports.)

Total Burden Hours: 2,076 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to

respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Sarah J. Ryker,

Associate Director for Energy and Mineral Resources, U.S. Geological Survey.

[FR Doc. 2023–01020 Filed 1–19–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L16100000.DP0000 LX.SS.E0900000]

Notice of Availability of the Draft Resource Management Plan and Draft Environmental Impact Statement for the North Dakota Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a draft resource management plan (RMP) and draft environmental impact statement (EIS) for the North Dakota Field Office and by this notice announces the opening of the comment period on the Draft RMP/EIS. This notice also announces the comment period on the BLM's proposed area of critical environmental concern (ACEC) within the RMP area.

DATES: This notice announces the opening of a 90-day comment period for the Draft RMP/EIS beginning with the date of the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) of the Draft RMP/EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

To afford the BLM the opportunity to consider comments in the Proposed RMP/Final EIS, please ensure that the BLM receives your comments prior to the close of the 90-day public comment period or 15 days after the last public meeting, whichever is later.

In addition, this notice also announces the opening of a concurrent 60-day comment period for the ACEC proposed in the Draft RMP.

The BLM will hold a total of three public meetings. One meeting will be held virtually and two meetings will be held in-person. In-person meeting locations will be announced along with details of all meetings once they are known. In compliance with Centers for Disease Control and Prevention public health guidelines, the BLM may need to hold public meetings in virtual format if county-level transmission of COVID–19 is ''high'' at the time of the public meetings. In that case, the BLM will hold three virtual public meetings.

In all cases, the dates and locations of meetings will be announced at least 15 days in advance through local media, social media, newspapers, and the ePlanning website (see **ADDRESSES** section).

ADDRESSES: The Draft RMP/EIS is available for review on the BLM ePlanning project website at *https://eplanning.blm.gov/eplanning-ui/project/1505069/510.* The ePlanning website also includes background information on the North Dakota RMP revision.

Written comments related to the North Dakota Draft RMP/EIS may be submitted by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/1505069/510.*
- *Mail:* North Dakota Field Office, Attention: North Dakota RMP/EIS, 99 23rd Ave. West, Suite A, Dickinson, ND 58601.

Documents pertinent to this proposal may be examined online at the ePlanning project website and at the North Dakota Field Office.

FOR FURTHER INFORMATION CONTACT: Kristine Braun, Planning and Environmental Coordinator for the Eastern Montana/Dakotas District, telephone (701) 227–7725; address North Dakota Field Office, 99 23rd Ave. West, Suite A, Dickinson, ND 58601; email *kebraun@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mrs. Braun. 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: This document provides notice that the BLM Montana/Dakotas State Director has prepared a Draft RMP/EIS, provides information announcing the opening of the comment period on the Draft RMP/EIS, and announces the comment period on the BLM's proposed ACEC. The planning area includes the entire state of North Dakota and encompasses approximately 58,500 acres of BLM-managed public land and 4.1 million acres of BLM-managed mineral estate.

Purpose and Need for the Planning Effort

The need for the North Dakota RMP revision is to address changes in resource conditions, shifting demands for resource uses, new technologies, new program and resource guidance and policies, and new scientific information since the development of the 1988 RMP. The purpose of this RMP revision is to develop management direction to guide future land management for BLM-managed lands and minerals in North Dakota. The BLM has identified four specific purposes to describe BLM's distinctive role in the North Dakota landscape: (1) Provide recreational opportunities and improve access to BLM-managed lands; (2) Contribute to the conservation and recovery of threatened and endangered and special status species; (3) Manage mineral and energy development on BLM-managed lands; and (4) Manage for other social and scientific values.

Alternatives Including the Preferred Alternative

The BLM has analyzed four alternatives in detail, including the no action alternative. Alternative A is the No Action Alternative, which is a continuation of current management direction in the existing 1988 North Dakota RMP and associated amendments.

Alternative B emphasizes sustaining the ecological integrity of habitats for all priority plant, wildlife, and fish species, while allowing appropriate development scenarios for allowable uses, including opportunities for mineral and energy development. Where Federal oil and gas is available for leasing, major stipulations would apply to most areas. Alternative B would designate one special recreation management area (SRMA), two backcountry conservation areas (BCAs), and one ACEC, and would find three eligible Wild and Scenic River segments suitable for designation.

Alternative B.1 is a sub-alternative to Alternative B that provides the same management opportunities and protections as found under Alternative B for all resources except for coal. Alternative B.1 further restricts Federal coal leasing to only those areas within existing Federal mine permit boundaries.

Alternative C is similar to Alternative B but provides for more flexibility in management of natural and cultural resources while providing modest development of resource uses. Alternative C provides opportunities for Federal mineral and energy

development with fewer restrictions than Alternative B, but more than Alternative A, in terms of major stipulations and areas determined unacceptable for Federal coal leasing. Alternative C provides for the same number of designated areas (one SRMA, two BCAs, one ACEC), but with reduced sizes and/or less restrictive management actions.

The BLM further considered six additional alternatives but dismissed these alternatives from detailed analysis as explained in the Draft RMP/EIS.

The State Director has identified Alternative B as the preferred alternative. Alternative B was found to best meet the State Director's planning guidance and, therefore, selected as the preferred alternative because it best meets the purpose and need, while aligning with Department of the Interior priorities.

ACECs

Consistent with land use planning regulations at 43 CFR 1610.7–2(b), the BLM is announcing the opening of a concurrent comment period on the ACEC proposed for designation in the preferred alternative. Comments may be submitted using any of the methods listed in the **ADDRESSES** section.

There is one proposed ACEC included in the preferred alternative: Mud Buttes (960 acres) located in Bowman County, North Dakota.

- Alternatives B and C: no surface occupancy for fluid minerals, unacceptable for coal leasing, closed to mineral material disposal, casual collection of invertebrate or plant fossils prohibited.
- Alternative B: right-of-way exclusion area, closed to nonenergy solid leasable minerals, and recommended for withdrawal from locatable mineral entry.
- Alternative C: right-of-way avoidance area, no surface disturbance allowed for nonenergy solid leasable mineral development.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 30-day public protest period and a 60-day Governor's consistency review on the Proposed RMP. The Proposed RMP/Final EIS is anticipated to be available for public protest in the summer of 2023, with an approved RMP and Record of Decision in the fall of 2023.

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM Manual 1780, and Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

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.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.7–2.)

Sonya Germann,

Montana/Dakotas State Director.

[FR Doc. 2023–00929 Filed 1–19–23; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500168895]

Notice of Filing of Plats of Survey, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing of plats of surveys.

SUMMARY: The plat of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Idaho State Office, Boise, Idaho, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the BLM, are necessary for the management of the Birds of Prey National Conservation Area.

Boise Meridian, Idaho

T. 1 N., R. 1 W., Sections 15, 17, 21, 22, 27 and 28, accepted December 23, 2022.

ADDRESSES: A copy of the plat may be obtained from the Public Room at the BLM, Idaho State Office, 1387 S Vinnell Way, Boise, Idaho 83709, upon required payment.

FOR FURTHER INFORMATION CONTACT: Daniel S. Young, Branch of Cadastral Survey, BLM, 1387 South Vinnell Way, Boise, Idaho 83709–1657; (208) 373–3994; email: *dsyoung@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 7–1–1 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The plat, in one sheet, incorporating the field notes of the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 17, 21 and 22, Township 1 North, Range 1 West, Boise Meridian, Idaho, was accepted December 23, 2022.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Idaho, BLM within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. The protest must identify the plat(s) of survey that the person or party wishes to protest and contain all reasons and evidence in support of the protest. The protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any protest filed after the scheduled date of official filing will be untimely and will not be considered. A protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Idaho during regular business hours; if received after regular business hours, a protest will be considered filed the next business day. If a protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a protest, you should be aware that the documents you submit, including your personal identifying information, may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C., chapter 3)

Daniel S. Young,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2023–01075 Filed 1–19–23; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500168247]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Lava Ridge Wind Project in Jerome, Lincoln, and Minidoka Counties, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) announces the availability of the draft Environmental Impact Statement (EIS) for the proposed Lava Ridge Wind Project in Jerome, Lincoln, and Minidoka Counties, Idaho.

DATES: To afford the BLM the opportunity to consider comments in the final EIS, please ensure that the BLM receives your comments within 60 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the draft EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

ADDRESSES: The draft EIS is available for review on the BLM ePlanning project website at *https://bit.ly/3uu3BuV.*

Written comments related to the Lava Ridge Wind Project may be submitted by any of the following methods:

- *ePlanning Website: https://bit.ly/3uu3BuV.*
- *Email: BLM_ID_LavaRidge@blm.gov.*
- *Mail:* Lava Ridge Wind Project EIS, BLM Shoshone Field Office, Attn: Kasey Prestwich, 400 West F Street, Shoshone, ID 83352.

Documents pertinent to this proposal may be examined online at: *https://bit.ly/3uu3BuV* and at the BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Kasey Prestwich, project manager, telephone 208–732–7204; address BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352; email *kprestwich@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Prestwich. 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:

Purpose and Need

Magic Valley Energy, LLC (MVE) has applied for a right-of-way (ROW) grant to construct, operate, maintain, and decommission the Lava Ridge Wind Project (the project), a wind energy facility and ancillary facilities primarily on BLM-administered public lands in Jerome, Lincoln, and Minidoka counties, Idaho. The BLM's purpose is to respond to the ROW application submitted by MVE in compliance with the FLPMA, BLM ROW regulations, and other applicable Federal laws and policies. The need for the BLM's Proposed Action arises from Title V of the FLPMA, which establishes a multiple use mandate for management of Federal lands, including ''systems for generation, transmission, and distribution of electric energy'' (43 U.S.C 1761).

Proposed Action and Alternatives

The project, as described by the Proposed Action (Alternative B), would be located primarily on public lands administered by the BLM Shoshone Field Office, approximately 25 miles northeast of Twin Falls, Idaho. The project would consist of up to 400 wind turbines and associated infrastructure, including new and improved roads, powerlines for collection and transmission of electricity, substations, operation and maintenance facilities, and a battery storage facility. The project's 500-kilovolt generation intertie transmission line would interconnect at Idaho Power Company's existing Midpoint Substation or at a new substation within the ROW corridor of the northern portion of the Southwest Intertie Project. The project's estimated generation capacity is 1,000 megawatts or more.

The project area spans 197,474 acres and all project components would be sited within a series of corridors. These corridors are approximately one-half mile wide and cover approximately 84,385 acres, of which 75,760 acres are located on public lands managed by the BLM, 2,910 acres are on State lands managed by the Idaho Department of Lands, 5,417 acres are on private lands, and 288 acres are on lands managed by the Bureau of Reclamation. All wind turbines, powerlines, and associated infrastructure would be located on lands managed by the BLM and the Idaho Department of Lands. The Bureau of Reclamation and private lands would include the use of existing public access roads, but no other project related infrastructure. The project infrastructure proposed within the corridors is estimated to have a 2,374-acre footprint and a total disturbance area of 9,114 acres.

Under the No Action Alternative, the Lava Ridge Wind Project would not be authorized and would not be constructed.

The project area of Alternative C would span 146,389 acres and the maximum number of turbines would be 378. Alternative C removes some siting corridors in the southwestern and northern portions of the project area to avoid or minimize potential impacts to Wilson Butte Cave, the Minidoka National Historic Site, and associated impacts to the Native American and Japanese American communities. Alternative C also removes siting corridors in the northern portion of the project area to reduce the potential for fragmenting wildlife habitat.

The project area of Alternative D would be the smallest of all action alternatives at 110,315 acres and the maximum number of turbines would be 280. Alternative D builds on the proposed changes in Alternative C that avoid and minimize potential impacts to Wilson Butte Cave, the Minidoka National Historic Site, and wildlife habitat. Alternative D further reduces potential impacts within wildlife habitat by removing siting corridors located in the eastern portion of the project area that have higher sagebrush cover that provide functional Greater sage-grouse habitat. Also, Alternative D would have substantially fewer wind turbines and less infrastructure than Alternatives B and C. It therefore would reduce the potential for bat and avian mortality and potential conflicts with livestock grazing operations.

The project area of Alternative E would span 122,444 acres and the maximum number of turbines would be 269. Alternative E builds off the proposed changes in Alternative C that avoid or minimize potential impacts to Wilson Butte Cave, the Minidoka National Historic Site, and wildlife habitat. Alternative E would remove siting corridors that are directly east of the Minidoka National Historic Site, resulting in this alternative having the least amount of visual impacts to the historic site. Like Alternative D, the smaller footprint and lower number of turbines would also reduce the potential for bat and avian mortality and potential conflicts with livestock grazing operations.

The BLM has identified Alternatives C and E as the agency's preferred alternatives. In selecting preferred alternatives, the BLM aims to consider project elements that balance energy production with reducing the potential for adverse impacts. Identification of these as the agency's preferred alternatives does not imply that one of these will be selected as the BLM's final decision. Information acquired during the public comment period could identify an alternative that blends elements of the agency's preferred alternatives, incorporates elements of any of the alternatives, or selects any of the five alternatives as the proposed alternative in the final EIS.

Draft EIS Preparation Process

A Notice of Intent to prepare an EIS was published in the **Federal Register** on August 20, 2021, (86 FR 46867), announcing the beginning of the public scoping process. The scoping period closed on October 20, 2021, and 1,478 comment submissions were received; of those, 1,157 are unique. A scoping report was prepared and is available on the project's ePlanning website *https://bit.ly/3uu3BuV.*

The scoping process and subsequent feedback received from agency resource specialists, Native American Tribes, cooperating agencies, consulting parties, and interested parties identified a range of concerns to be included in the EIS analysis. Concerns included, but were not limited to the following:

- Potential impacts to the Minidoka National Historic Site and associated impacts to Japanese American communities;
- Potential impacts to Wilson Butte Cave and associated impacts to Native American Tribes;
- Potential impacts to cultural resources associated with Native American habitation and early European-American settlement;
- Potential impacts to the Shoshone-Bannock Tribes' treaty rights, including the rights to hunt and harvest foods, medicines, and materials from their homeland;
- Potential impacts to big game winter range and movement corridors, bats, raptors, and the Greater sage-grouse general habitat management area;
- Potential impacts to permitted livestock grazing operations;
- Potential impacts to transportation networks needed to access the project; and
- Potential socioeconomic impacts.

Lead and Cooperating Agencies

The BLM is the lead agency responsible for completing the EIS and deciding whether to approve, approve with conditions, or deny MVE's request for a ROW grant. Cooperating agencies involved in the development of the draft EIS include the National Park Service, the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the State of Idaho, and the counties of Jerome, Lincoln, and Minidoka, Idaho.

Schedule for Decision Making Process

The final EIS is tentatively scheduled to be issued in summer 2023, with a Record of Decision in fall 2023.

Public Involvement Process

The BLM will hold virtual and in-person public meetings during the comment period. The date(s) and location(s) of meetings will be announced in advance through local media, email, mail, and the ePlanning project website *https://bit.ly/3uu3BuV.*

The purpose of public review of the draft EIS is to provide an opportunity for meaningful collaborative public engagement and for the public to provide substantive comments, such as identification of factual errors, data gaps, relevant methods, or scientific studies. You may submit comments at any time during the 60-day comment period by using one of the methods listed in the **ADDRESSES** section of this notice. The BLM will respond to substantive comments by making appropriate revisions to the EIS or explaining why a comment did not warrant a change.

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

The BLM will use the draft EIS review process to help fulfill the public involvement requirements under the National Historic Preservation Act (54 U.S.C. 306108), as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the Proposed Action will assist the BLM in identifying and evaluating impacts to such resources.

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.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10)

Michael C. Courtney,

BLM Twin Falls District Manager.

[FR Doc. 2023–00646 Filed 1–19–23; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–35116; 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 January 7, 2023, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by February 6, 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 January 7, 2023. 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.

IOWA

Crawford County

Denison Opera House, (Movie Theaters of Iowa MPS), 1303 Broadway (1301–1305 Broadway), Denison, MP100008627

Woodbury County

Warnock Building, 701–705 Douglas St., Sioux City, SG100008628

MASSACHUSETTS

Bristol County

Oxford School, 347 Main St., Fairhaven, SG100008623

Third Street Commercial Corridor Historic District, 18–48 3rd St., Fall River, SG100008624

OHIO

Franklin County

Beatty-Moore House, (Twentieth-Century African American Civil Rights Movement in Ohio MPS), 41 North Monroe Ave., Columbus, MP100008631

Walters, Vincent, House-Walters Music Academy, 225 North Monroe Ave., Columbus, SG100008636

SOUTH DAKOTA

Meade County

Royal Center School, (Schools in South Dakota MPS), Northwest corner of intersection of Sulphur Cutoff and Stoneville Rds., Opal vicinity, MP100008632

TEXAS

Travis County

Suburban Alcoholic Foundation Clubhouse, 2809 Northland Dr., Austin, SG100008622

WISCONSIN

Manitowoc County

West, Ruth St. John and John Dunham, House and Gardens, 915 Memorial Dr., Manitowoc, SG100008630

Additional documentation has been received for the following resources:

ARKANSAS

Pulaski County

West 7th Street Historic District (Additional Documentation), Portions of 800–1100 blocks of W 7th St., Little Rock, AD08001341

Central High School Neighborhood Historic District (Additional Documentation),Roughly bounded by MLK Dr., Thayer Ave., West 12th St., and Roosevelt Rd., Little Rock, AD96000892

MICHIGAN

Leelanau County

Fishtown Historic District (Additional Documentation), West River St., West Cedar St., West Avenue A, Leland Township, AD100006765, Comment period: 0 days

Authority: Section 60.13 of 36 CFR part 60.

Dated: January 11, 2023.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2023–01070 Filed 1–19–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–006]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 25, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 731–TA–1580, 1582 and 1583 (Final) (Steel Nails from India, Thailand, and Turkey). The Commission currently is scheduled to complete and file its determinations and views of the Commission on February 6, 2023.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Tyrell Burch, Management Analyst, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 17, 2023.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2023–01144 Filed 1–18–23; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1126]

Bulk Manufacturer of Controlled Substances Application: Kinetochem LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Kinetochem LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before March 21, 2023. Such persons may also file a written request for a hearing on the application on or before March 21, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on November 16, 2022, Kinetochem LLC, 96 Market Street, Suite 102, Georgetown, Texas 78626–3618, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to bulk manufacture the listed controlled substances as Active Pharmaceutical Ingredients (API) to its customers as well as for research and clinical trials. In reference to drug codes 7360

(Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–01036 Filed 1–19–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1124]

Importer of Controlled Substances Application: Siegfried USA, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Siegfried USA, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 21, 2023. Such persons may also file a written request for a hearing on the application on or before February 21, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 8, 2022, Siegfried USA, LLC, 33 Industrial Park Road, Pennsville, New Jersey 08070 applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Phenylacetone	8501	II
Opium, raw	9600	II
Poppy Straw Concentrate.	9670	II

The company plans to import the listed controlled substances to manufacture bulk Active Pharmaceuticals Ingredients (API) for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–01034 Filed 1–19–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1125]

Importer of Controlled Substances Application: VA Cooperative Studies Program

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: VA Cooperative Studies Program has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 21, 2023. Such persons may also file a written request for a hearing on the application on or before February 21, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 3, 2022, VA Cooperative Studies Program, 2401 Centre Avenue SE, Albuquerque, New Mexico 87106, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I

The company plans to import the listed controlled substance for clinical trials or research. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–01035 Filed 1–19–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1116]

Importer of Controlled Substances Application: Noramco

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Noramco has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 21, 2023. Such persons may also file a written request for a hearing on the application on or before February 21, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on October 19, 2022, Noramco, 500 Swedes Landing Road, Wilmington, Delaware 19801–4417, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Nabilone	7379	II
Phenylacetone	8501	II
Opium, Raw	9600	II
Opium Extracts	9610	II
Opium Fluid Extract	9620	II
Opium Tincture	9630	II
Opium Powdered	9639	II
Opium Granulated	9640	II
Opium Poppy/Poppy Straw.	9650	II
Noroxymorphone	9668	II
Poppy Straw Concentrate.	9670	II
Tapentadol	9780	II

The company plans to import Phenylacetone (8501), and Poppy Straw Concentrate (9670) to bulk manufacture other controlled substances for distribution to its customers. The company plans to import an intermediate form of Tapentadol (9780) to bulk manufacture Tapentadol for distribution to its customers. In reference to drug codes 7360 (Marihuana) and 7370 (Tetrahydrocannabinols), the company plans to import a synthetic cannabidiol and a synthetic Tetrahydrocannabinol. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–01033 Filed 1–19–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1127]

Bulk Manufacturer of Controlled Substances Application: Navinta LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Navinta LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before March 21, 2023. Such persons may also file a written request for a hearing on the application on or before March 21, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on October 6, 2022, Navinta LLC, 1499 Lower Ferry Road, Ewing, New Jersey 08618–1414, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Pentobarbital	2270	II
Levomethorphan	9210	II
Levorphanol	9220	II
Remifentanil	9739	II

The company plans to bulk manufacture Active Pharmaceutical Ingredients (API) quantities of the listed controlled substances for validation purpose and the Food and Drug Administration approval. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–01047 Filed 1–19–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1106]

Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: Soo Labs II, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to its regulations governing the program of growing marihuana for scientific and medical research under DEA registration.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before March 21, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may submit electronic comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (APIs) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). DEA will conduct this evaluation in the manner described in the rule published at 85 FR 82333 on December 18, 2020, and reflected in DEA regulations at 21 CFR part 1318.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on May 11, 2022, Soo Labs II, Inc., 1415 Industrial Park Drive, Sault Sainte Marie, Michigan 49783–1455, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023–01030 Filed 1–19–23; 8:45 am]

BILLING CODE P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation (LSC) Board of Directors and its committees will meet January 22–24, 2023. On Sunday, January 22, the first meeting will begin at 1:30 p.m. MST, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Monday, January 23, the first meeting will again begin at 8:30 a.m. MST, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, January 24, the first meeting will begin at 8:00 a.m. MST, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting.

PLACE: Public Notice of Hybrid Meeting.

LSC will conduct its January 22–24, 2023 meetings at the Sheraton Phoenix Downtown Hotel, 340 North 3rd Street, Phoenix, AZ 85004, and virtually via Zoom.

Public Observation: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who wish to participate virtually in the public proceedings may do so by following the directions provided below.

Directions for Open Sessions

Sunday, January 22, 2023

- To join the Zoom meeting by computer, please use this link.
  - *https://lsc-gov.zoom.us/j/88994750560?pwd=aGhaK3hLN2R4TFRSZExJNTlUZHN2UT09.*
  - *Meeting ID:* 889 9475 0560.
  - *Passcode:* 012223.

Monday, January 23, 2023

- To join the Zoom meeting by computer, please use this link.
  - *https://lsc-gov.zoom.us/j/88651677172?pwd=am92YVZINUlUSlVaUnBkcjFSbWltUT09.*
  - *Meeting ID:* 886 5167 7172.
  - *Passcode:* 012323.

Tuesday, January 24, 2023

- To join the Zoom meeting by computer, please use this link.
  - *https://lsc-gov.zoom.us/j/82342982872?pwd=eGxicWR2bDVURHhNZmdqMTl0blV5dz09.*
  - *Meeting ID:* 823 4298 2872.
  - *Passcode:* 012423.
  - If calling from outside the U.S., find your local number here: *https://lsc-gov.zoom.us/u/acCVpRj1FD.*

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 Board or 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, except as noted below.

Audit Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to meeting to discuss follow-up work by the Office of Compliance and Enforcement relating to open Office of Inspector General investigations.

Finance Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to discuss LSC's banking services and investment policy.

Office Space Committee—the meeting is closed to public observation.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to discuss a report and recommendations from the Office Space Committee and will consider and act on the General Counsel's report on potential and pending litigation involving LSC as well as a list of prospective Leaders Council and Emerging Leaders Council members.

Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session.[1]

A verbatim written transcript will be made of the closed sessions of the Audit, Finance, and Office Space Committee and Board meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), (7), (9) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Meeting Schedule

Sunday, January 22, 2023

Start Time (All MST)

1. Audit Committee Meeting 1:30 p.m. MST

a. Matters to be discussed include the Committee's 2022 self-evaluation and goals for 2023; reports from the Office of Compliance and Enforcement and Office of Inspector General; and a Management report on risk management.

2. Finance Committee Meeting

a. Matters to be discussed include the Committee's 2022 self-evaluation and goals for 2023; LSC's appropriations for fiscal year 2023, financial report for the first two months of the fiscal year, and a resolution approving a consolidated operating budget for fiscal year; and LSC's appropriations request for fiscal year 2024;

Monday, January 23, 2023 Start Time (All MST)

1. [Tentative] Closed Office Space Committee Meeting

8:30 a.m. MST

a. Matters to be discussed include a recommendation for future LSC office space.

2. Meeting of Communications Subcommittee of the Institutional Advancement Committee

a. Matters to be discussed include the Committee's 2022 self-evaluation and goals for 2023 and an update on LSC's social media and communications activities.

3. Governance and Performance Review Committee Meeting

a. Matters to be discussed include the Committee's 2022 self-evaluation and goals for 2023; the activities of the Legal Aid Interagency Roundtable; annual Board and Committee evaluations; the LSC President's Evaluation; and the activities of the Office of Inspector General.

4. Delivery of Legal Services Committee Meeting

a. Matters to be discussed include the Committee's 2022 self-evaluation and goals for 2023 and an update on the revisions to LSC's Performance Criteria.

5. Open Board Meeting

a. Matters to be discussed include nominations for Chair and Vice Chair of the Board; reports of the Chair, Board members, President, and Inspector General; and reports of standing Board Committees.

Tuesday, January 24, 2023 Start Time (All MST)

1. Open Board Meeting (Cont'd.) 8:00 a.m. MST

2. Closed Board Meeting

Please refer to the LSC website (*https://www.lsc.gov/events/board-directors-quarterly-meeting-january-22-24-2023-phoenix-az*) for the final schedule and meeting agendas in electronic format. These materials will be made available at least 24 hours in advance of the meeting start time.

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: January 17, 2023.

Jessica Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2023–01132 Filed 1–18–23; 11:15 am]

BILLING CODE 7050–01–P

[1] 5 U.S.C. 552b (a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Astronomy and Astrophysics Advisory Committee (#13883) (Virtual).

DATE AND TIME: February 24, 2023; 12:00 p.m.–4:00 p.m.

PLACE: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Zoom Videoconference).

TYPE OF MEETING: Open.

Attendance information for the meeting will be forthcoming on the website: *https://www.nsf.gov/mps/ast/aaac.jsp.*

CONTACT PERSON: Dr. Carrie Black, Program Director, Division of Astronomical Sciences, Suite W 9188, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–2426.

PURPOSE OF MEETING: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies. To prepare the annual report.

AGENDA: To provide updates on Agency activities and to discuss the Committee's draft annual report due 15 March 2023.

Dated: January 13, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–01014 Filed 1–19–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—NSF Oversight Review of the Center for High Resolution Neutron Scattering (CHRNS) and The Midscale RI Project for a World Class Neutron Spin-Echo Spectrometer for the Nation (or NSE project)—Hybrid (On-site & Virtual) (#1203).

Date and Time: Feb 28, 2023; 8:30 a.m.–6 p.m., Mar 01, 2023; 8:30 a.m.–3 p.m.

Place: NIST Center for Neutron Research, 100 Bureau Drive, Gaithersburg, MD 20899.

To attend this meeting in-Person: Prior approval to access the NCNR facility is required.

Details are available at: *https://www.nist.gov/ncnr/arrange-visit-ncnr/obtaining-access-ncnr*.

To attend the open sessions of the meeting virtually, please send a request to *somardia@nsf.gov.*

Type of Meeting: Part-open.

Contact Person: Dr. Souleymane Diallo, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–8302.

Purpose of Meeting: Site visit to provide advice and recommendations concerning Progress and Performance of CHRNS and NSE projects.

Agenda: Open sessions include science presentations by the facility and project staff.

Tuesday, February 28, 2023

8:30 a.m.–12 p.m. CHRNS & NSE Reviews (Open)
12 p.m.–1 p.m. Executive Session (Closed)
1–4:45 p.m. Sessions (Open)
4:45–6 p.m. Executive Session (Closed)

Wednesday, March 1, 2023

8:30–10 a.m. CHRNS & NSE Reviews (Open).
10 a.m.–3 p.m. Executive Session (Closed).

Reason for Closing: Topics to be discussed and evaluated during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 13, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–01015 Filed 1–19–23; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, January 25, 2023 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to propose a rule to implement Section 27B of the Securities Act of 1933, as added by Section 621 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

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

Dated: January 18, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–01213 Filed 1–18–23; 4:15 pm]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17753 and #17754; Washington Disaster Number WA–00110]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Washington

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Washington (FEMA–4682–DR), dated 01/12/2023.

Incident: Severe Winter Storm, Straight-Line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 11/03/2022 through 11/08/2022.

DATES: Issued on 01/12/2023.

Physical Loan Application Deadline Date: 03/13/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 10/12/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/12/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clallam, Island, Jefferson, Lewis, Okanogan, Skagit, Skamania, Snohomish, Wahkiakum.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17753 6 and for economic injury is 17754 0.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2023–01028 Filed 1–19–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 11969]

Notice of Charter Renewal for the Advisory Committee on Historical Diplomatic Documentation

The Advisory Committee on Historical Diplomatic Documentation has renewed its charter for a period of two years. This Advisory Committee will continue to make recommendations to the Historian and the Department of State on all aspects of the Department's program to publish the *Foreign Relations of the United States* series as well as on the Department's responsibility under statute to open its 25-year-old and older records for public review at the National Archives and Records Administration.

The Committee consists of nine members drawn from among historians, political scientists, archivists, international lawyers, and other social scientists who are distinguished in the field of U.S. foreign relations. Questions concerning the Committee and the renewal of its Charter should be directed to Adam M. Howard, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, 2300 E Street NW, Washington, DC 20372 (Navy Potomac Annex), telephone (202) 955–0214 (email *history@state.gov*).

The Charter was renewed on November 13, 2022.

For further information about the Board, please contact Adam Howard, Executive Secretary, Office of the Historian at *History@state.gov*.

Adam M. Howard,

Executive Secretary, Office of the Historian, Department of State.

[FR Doc. 2023–01089 Filed 1–19–23; 8:45 am]

BILLING CODE 4710–34–P

TENNESSEE VALLEY AUTHORITY

Cumberland Fossil Plant Retirement Environmental Impact Statement

AGENCY: Tennessee Valley Authority.

ACTION: Record of decision.

SUMMARY: The Tennessee Valley Authority (TVA) has made a decision to adopt the Preferred Alternative identified in the Cumberland Fossil Plant Retirement Final Environmental Impact Statement (EIS). The Notice of Availability of the Final EIS for the Cumberland Fossil Plant Retirement was published in the **Federal Register** on December 9, 2022. TVA's preferred alternative, Alternative A, involves the retirement and demolition of TVA's two-unit, coal-fired Cumberland Fossil Plant (CUF) and the construction and operation of a natural gas-fueled combined cycle (CC) plant on the CUF Reservation to replace the generation capacity of one of the two retired units. This least-cost alternative would achieve the purpose and need of the project to retire and decommission the two CUF units, one unit by the end of 2026 and the other unit by the end of 2028, and to provide replacement generation that can supply 1,450 megawatts (MW) of firm, dispatchable power by the time the first unit is retired by the end of 2026 to ensure that TVA is able to meet required year-round generation, maximum capacity system demands and planning reserve margin targets, particularly during peak load events.

FOR FURTHER INFORMATION CONTACT: Ashley Pilakowski, NEPA Project Manager, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902; telephone 865–632–2256; or email *aapilakowski@tva.gov.* The Final EIS, this Record of Decision (ROD) and other project documents are available on TVA's website *https://www.tva.gov/nepa.*

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) (40 Code of Federal Regulations (CFR) 1500 through 1508) and TVA's NEPA procedures (18 CFR 1318). TVA is a corporate agency of the United States that provides electricity for business customers and local power distributors serving 10 million people in the Tennessee Valley—an 80,000-square-mile region comprised of Tennessee and parts of Virginia, North Carolina, Georgia, Alabama, Mississippi, and Kentucky. TVA receives no taxpayer funding and derives virtually all revenues from the sale of electricity. In addition to operating and investing revenues in its power system, TVA provides flood control, navigation, and land management for the Tennessee Valley watershed and provides economic development and job creation assistance within the Service area.

In 2019, TVA completed its Integrated Resource Plan (IRP) and associated Final EIS. The IRP identified the various energy resource options that TVA intends to pursue to meet the energy needs of the Tennessee Valley region over a 20-year planning period.

Following the completion of the TVA 2019 IRP, TVA began conducting end-of-life evaluations of its operating coal-fired generating plants not already scheduled for retirement to inform long-term planning. This evaluation confirmed that the aging TVA coal fleet is among the oldest in the nation and is experiencing performance challenges as well as deteriorating material condition. The performance challenges are projected to increase because of the coal fleet's advancing age and the difficulty of adapting the fleet's generation within the changing generation profile. The continued long-term operation of TVA's coal plants is contributing to environmental, economic, and reliability risks. CUF is the largest plant in the TVA coal fleet with a summer net generating capacity of 2,470 MW. CUF is situated on a 2,388-acre reservation on the Cumberland River in Cumberland City, Stewart County, Tennessee.

CUF was built between 1968 and 1973 and used primarily as baseload generation. As TVA's generating fleet evolved, primarily with the additions of nuclear, gas, and renewable resources over the past 10–15 years, there was less of a need for CUF to consistently operate at full power. This has resulted in frequent cycling of the large super-critical units or turning them on and off as needed to meet demand. The plant was not originally designed for this type of operation, which presents reliability challenges that are difficult to anticipate and expensive to mitigate. As TVA continues to transition the rest of its fleet to cleaner and more flexible technologies, CUF will continue to be challenged to reliably operate on this as-needed basis. Based on this analysis, TVA has developed planning assumptions for CUF retirement. These assumptions include retirement of both CUF units and the addition of at least 1,450 MW of firm, dispatchable generation to replace the generation capacity lost from retirement of one of the CUF units, which is in-line with the recommendations in the 2019 IRP. Replacement generation of this kind will allow TVA to replace the dependable capacity of the first unit as well as account for modest anticipated load increases. The replacement generation would need to be online prior to retirement of the first CUF unit by the end of 2026. Planning for the replacement generation for the second retired CUF unit will be deferred to allow consideration of a broader range of replacement generation alternatives depending on system needs and the state of technology at the time replacement is needed.

TVA has prepared the Final EIS pursuant to NEPA to assess the

environmental impacts associated with retiring and decommissioning the two coal-fired CUF units and constructing and operating the replacement generation for one of the retired units.

Alternatives Considered

TVA assessed a No Action Alternative and three action alternatives. Under all action alternatives, two CUF units would be retired and demolished. The three action alternatives assessed in the Final EIS provide at least 1,450 MW of replacement generation for one retired unit using one of the following: (1) construction and operation of a natural gas-fueled CC plant on the CUF Reservation (Alternative A); (2) construction and operation of natural gas-fueled simple cycle combustion turbine (CT) plants at two alternate locations (Alternative B); and (3) construction and operation of solar generation and energy storage facilities at alternate locations primarily in Middle Tennessee (Alternative C). The Final EIS also evaluated related actions associated with the gas supply and transmission components of the respective alternatives.

The alternatives considered by TVA in the Draft and Final EIS are:

No Action Alternative—Under the No Action Alternative, TVA would not retire the two CUF units. These units would continue to operate as part of the TVA generation portfolio. For the existing units to remain operational, additional construction, repairs, and maintenance would be necessary to maintain reliability and comply with applicable regulatory requirements, such as the Effluent Limitation Guidelines under the Clean Water Act (CWA). Under the No Action Alternative, TVA would not construct new replacement generation. Based on the age, material condition, and cost required to ensure reliability of CUF, this alternative does not meet the purpose and need of TVA's proposed action.

Alternative A—TVA's preferred alternative, Alternative A, involves retirement of CUF, demolition of the units, and construction and operation of a 1,450–MW natural gas-fueled CC plant on the CUF Reservation. The CC plant and associated 500-kilovolt (kV) switchyard and gas compression station would occupy approximately 196 acres. The 30-inch diameter gas pipeline to supply natural gas to the CC plant would be constructed and operated by Tennessee Gas Pipeline Company, L.L.C. (TGP) in a 100-foot-wide corridor adjacent to an existing TVA transmission line crossing portions of Dickson, Houston, and Stewart Counties, Tennessee.

The pipeline requires approval by the Federal Energy Regulatory Commission (FERC) through issuance of a Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act. TGP has submitted an application for certification of the pipeline to FERC. The pipeline project, named the Cumberland Project, is FERC Docket No. CP22–493–000 and the subject of a Notice of Intent (NOI) to prepare an EIS issued by FERC on September 13, 2022. Details of the pipeline and its potential environmental impacts, provided in resource reports prepared by TGP and submitted to FERC, are incorporated into the TVA Final EIS.

Alternative B—Alternative B would provide the necessary replacement generation through the construction and operation of a 4-unit combustion turbine (CT) plant on TVA's Johnsonville reservation in New Johnsonville, Humphreys County, Tennessee, and a 3-unit CT plant on TVA's Gleason Reservation near Dresden in Weakley County, Tennessee. The two CT plants would have a combined generating capacity of 1,530 MWs. The Johnsonville CT plant would occupy the site of a demolished coal plant and the Gleason CT plant site is relatively undisturbed. Both sites have an adequate existing natural gas supply. The Gleason CT plant would require the construction of a 40-mile, 500-kV transmission line and 500-kV substation in Weakley and Henry Counties, Tennessee.

Alternative C—Under Alternative C, the necessary replacement power would be provided by the construction and operation of 3,000 MW of solar photovoltaic generating facilities and 1,700 MW of battery energy storage facilities. Due to an average annual capacity factor of 25 percent for solar resources, in order to match the total energy output lost to the TVA system from the retirement of the first CUF unit, a higher nameplate capacity would be required for a solar resource than the 1,450 MW minimum resource requirement for a fully dispatchable resource, such as a CC or CT plant. These facilities would be located at numerous sites totaling approximately 22,000 acres for the solar facilities and 640 acres for the battery storage facilities that are primarily in Middle Tennessee. Each solar and storage facility would also require the construction of an interconnection to the TVA transmission system.

TVA identified Alternative A, the retirement of CUF and the construction and operation of a 1,450–MW natural gas-fired CC plant on the CUF reservation, as the preferred alternative in both the Draft and Final EISs. This was largely due to Alternative A best meeting the purpose and need of the proposed action, particularly its ability to provide replacement generation that can supply 1,450 MW of firm, dispatchable power by the time the first CUF unit is retired by the end of 2026. The replacement described in Alternative A aligns with the 2019 IRP near-term actions to evaluate engineering end-of-life dates for aging generation units to inform long-term planning; enhance system flexibility to integrate renewables and distributed resources; increase reliability and resiliency; and meet near-term energy production goals. Alternative A costs approximately $1.8 billion less than Alternative C in project costs which include capital, fuel, transmission, and production costs. Financial and system analysis indicates that replacement of the first CUF unit with a CC plant is the best overall solution to provide low-cost, reliable, and cleaner energy for the TVA power system. TVA has also selected Alternative A because the proposed CC plant at CUF provides the flexibility needed to reliably integrate 10,000 MW of solar onto the system by 2035 and significantly reduces carbon emissions as compared to the No Action Alternative.

While the Alternative B replacement generation by the two CT plants could likely be constructed by the end of 2026, the planning, permitting, and construction of the associated 500-kV transmission line would be unachievable by the end of 2026. Likewise, for Alternative C, the construction of the multiple solar and storage facilities, as well as their associated transmission system interconnections, would be unachievable by the end of 2026.

Alternatives Considered Environmentally Preferable

The anticipated environmental impacts of the No Action Alternative and the three action alternatives are described in the Final EIS. For Alternative A, as noted above, the description of the anticipated impacts of the associated natural gas supply pipeline are based on information provided to TVA by TGP and will also be addressed in the EIS for the Cumberland pipeline project being prepared by FERC. For Alternative B, the route of the 40-mile, 500-kV transmission line and the location of the associated substation are unknown at this time and their potential impacts are described generally based on impact

assessments of previous TVA transmission projects. Similarly, the locations of the multiple solar and battery storage facilities for Alternative C are unknown at this time and the descriptions of their impacts are also described generally based on impact assessments of similar previous TVA projects. For several environmental resources, the differences in the impacts of the three action alternatives are negligible.

The No Action Alternative would avoid the impacts of constructing and operating new generating facilities and associated gas pipeline and transmission system connections. It would, however, continue to produce relatively large quantities of air pollutants, including greenhouse gases, from continued operation of the CUF coal-fired plant, as well as wastewater discharges and solid wastes from coal combustion.

The Alternative A and Alternative B generating plants have been sited and designed to largely avoid or minimize impacts to water resources, including streams and wetlands. The Alternative A natural gas pipeline would require trenching across several streams, resulting in short-term, localized impacts. The Alternative B transmission line would likely also cross streams and possibly wetlands, although with minimal impacts. Adverse effect to a historic house listed on the National Register of Historic Places resulting from the construction of the Alternative A CC plant would be mitigated by TVA in accordance with a Memorandum of Agreement with the Tennessee State Historic Preservation Office (SHPO). The Alternative B transmission line and Alternative C solar and storage facilities would, to the extent feasible, be sited to avoid impacts to historic properties and any unavoidable impacts would be mitigated.

All of the action alternatives would affect land use and prime farmland. The various components of Alternatives A, B, and C would have long-term effects on the land use of approximately 585 acres, 1,000 acres, and 22,500 acres, respectively. For Alternatives A and B, the effects on prime farmland would largely occur during the construction of the pipeline and transmission line and long-term effects would be minimal. Based on past experience in developing solar facilities in the TVA region, a large proportion of the 22,500 acres occupied by Alternative C facilities would be prime farmland. Aside from potential use as pasture, the solar facility sites would be unavailable for agricultural production. The sites could, however, be returned to agricultural production with little loss of soil productivity following decommissioning of the solar facilities. A portion of the approximately 640 acres occupied by storage facilities would likely be farmland, which would be converted to industrial use.

All of the Alternative A, B, and C components have been or would be sited to minimize impacts to threatened and endangered species. Most impacts to listed species would be avoided although all alternatives would likely adversely affect habitat for tree-roosting threatened and endangered bats through the clearing of forest. The clearing of forest would also result in local adverse effects to other forest-dwelling wildlife.

For the Cumberland Final EIS, TVA completed its consultation under section 7 of the Endangered Species Act (ESA) with the U.S. Fish and Wildlife Service (USFWS) on August 26, 2022. Since conclusion of that consultation, the USFWS reclassified the northern long-eared bat (NLEB) as ''endangered'' under the ESA on November 30, 2022. This reclassification becomes effective on January 30, 2023. Further, on September 13, 2022, the USFWS issued a proposed rule to list the tri-colored bat as ''endangered'' under the ESA. TVA will ensure that project activities are conducted in a manner consistent with any protections established for the tricolored bat, and with the up-listing of the NLEB to ''endangered'' that will become effective on January 30, 2023 pursuant to the ESA and its implementing regulations.

Locally adverse impacts to visual resources would likely result from all of the action alternatives. The main sources of visual impacts from Alternatives A and B would be from the cleared right-of-way for the 32-mile natural gas pipeline associated with Alternative A and the cleared right-of-way and approximate 100-foot tall transmission structures and conductors for the 40-mile transmission line associated with Alternative B. The Alternative C solar and battery storage facilities would alter the scenery at multiple locations. Overall visual impacts are likely lowest under Alternative A.

Based on currently available site-specific information, effects experienced by environmental justice populations may be amplified, specifically for adverse effects to surface water, waste, safety, noise, transportation, and visual aesthetics under Alternative A; for adverse effects to recreation, air quality, transportation, waste, noise, and visual aesthetics under Alternative B; and for adverse effects to land use, vegetation, recreation, water resources, wildlife, transportation, noise, safety, and visual aesthetics under Alternative C. However, none of the action alternatives are likely to result in significant disproportionate adverse impacts to qualifying low-income and minority environmental justice populations. All of the action alternatives would have local beneficial impacts from employment during the construction of the generating and storage facilities. For Alternative C, this construction employment would be dispersed over a much larger area than for Alternatives A and B. The retirement of CUF, however, would likely result in an overall decline in employment by plant operators, as the replacement facilities would require fewer employees.

All of the action alternatives would result in large decreases in emissions of air pollutants, including greenhouse gases (GHGs, ethane, nitrous oxide), compared to the No Action Alternative. Specifically, with respect to GHGs, TVA's primary analysis for GHG impacts is based on the use of ''proxy emissions.'' This proxy analysis shows similar GHG impacts for all action alternatives. Despite uncertainties surrounding the use of Social Cost of GHGs (SC–GHG), TVA conducted a life cycle analysis using the SC–GHGs as a secondary analysis that could be given appropriate and due weight by the decision-maker. Under such a secondary GHG analysis, Alternative C generates, compared to the No Action Alternative, the most cost savings (approximately $4.8 billion), followed by Alternative A (approximately $4.4 billion), then followed by Alternative B (approximately $3.9 billion). In sum, all action alternatives would have a long-term beneficial impact to air quality and climate compared to the No Action alternative, with Alternative C resulting in the largest decrease of air emissions. Alternatives A and B facilitate future integration of solar on the grid, thereby advancing TVA's path towards reducing carbon emissions by about 80 percent by 2035. The difference in impacts to most other environmental and socioeconomic resources amongst all action alternatives is small, with the exception of impacts to land use and prime farmland that are potentially the greatest under Alternative C.

TVA notes that the 2019 IRP (Chapter 5) accounts for the resiliency of TVA's power system, detailing the annual outage rate assumptions for all selectable resources including CC, CT, solar and battery (Alternatives considered in the Final EIS). For plans between IRPs, TVA regularly updates outage rates based on actual performance, and current planning

assumptions remain largely consistent with those discussed in the IRP. Appendix D of the 2019 IRP explains how the reserve margin study approach and analysis captures uncertainty that arises due to weather, load forecast error, and plant outages. The decision evaluated in the Cumberland EIS falls within the parameters of the broader, comprehensive asset strategy established by the 2019 IRP, which considers the resiliency of TVA's entire power system. Similarly, the IRP's evaluation of risk and the required planning reserve constraints appropriate to account for risk are inherently part of the broader asset strategy with which this decision evaluation and analysis is aligned.

Public Involvement

TVA initiated a 30-day public scoping period on May 11, 2021, when it published the NOI in the **Federal Register** (86 FR 25933) announcing the preparation of an EIS for the retirement of CUF and construction and operation of facilities to replace part of the retired generating capacity. TVA also announced the proposal and requested comments on the proposal in news releases; on its website; in notices in CUF-area newspapers; and in letters to federal, state, and local agencies and federally recognized Indian tribes. TVA held a live virtual public scoping meeting on May 27, 2021, and hosted a virtual meeting room with project information for the duration of the scoping period. TVA received approximately 830 scoping comments, the majority of which were through a form letter campaign. These comments were carefully considered during the preparation of the EIS.

The Notice of Availability (NOA) of the Draft EIS was published by the U.S. Environmental Protection Agency (USEPA) in the **Federal Register** on April 29, 2022 (87 FR 25485), initiating a 45-day public comment period that ended on June 13, 2022. The availability of the Draft EIS and request for comments was also announced on the TVA website; in regional and local newspapers; in a news release; and in letters to local, state, and Federal agencies and federally recognized tribes. TVA contacted local officials and leaders, schools, and community action organizations in the CUF area. TVA held a virtual public meeting and in-person public meetings in Cumberland City and Erin, Tennessee, during the Draft EIS comment period.

TVA received approximately 770 individual comments and 930 signatures on the Draft EIS, many of which were submitted through form letter campaigns. Most commentors generally supported the retirement of the CUF Plant but opposed Alternative A, Alternative B, or both. TVA carefully reviewed all of the substantive comments that it received and, where appropriate, revised the text of the EIS to address the comments. The submitted comments and TVA's responses to them are included in an appendix to the Final EIS. The USEPA, in its comments on the Draft EIS, requested to be a cooperating agency in the preparation of the Final EIS. TVA granted this request. After considering and responding to comments on the Draft EIS, TVA issued the Final EIS. The NOA for the Final EIS was published in the **Federal Register** on December 9, 2022 (87 FR 75625). Following the publication of the NOA for the Final EIS, and therefore outside of the comment period for the EIS, TVA received additional public comments in January 2023, including a comment letter from the USEPA. The USEPA reviewed the document in accordance with section 309 of the Clean Air Act (CAA) and section 102(2)(C) of NEPA. USEPA is also a cooperating agency on this project. The comments raised by the USEPA reiterated the agency's earlier comments on the Draft EIS and did not raise new issues of relevance that were not already addressed by TVA in the Final EIS or Appendix O of the Final EIS, with the exception of the resiliency of the considered Alternatives with respect to grid emergencies, which is addressed in the above section on ''Alternatives Considered Environmentally Preferable.''

Decision

TVA certifies, in accordance with 40 CFR 1505.2(b), that the agency has considered all of the alternatives, information, analyses, material in the record determined to be relevant, and objections submitted by State, Tribal, and local governments and public commenters for consideration in developing the Final EIS.

TVA has decided to implement the preferred alternative identified in the Final EIS: Alternative A, to retire and demolish the two CUF coal units and construct a new natural gas-fueled, 1,450–MW CC plant at the CUF reservation. This alternative best achieves TVA's purpose and need to retire the two CUF units and to replace the generation from one of the retired units by the end of 2026.

Mitigation Measures

TVA would employ standard practices and routine measures and other project-specific measures to avoid, minimize, and mitigate adverse impacts from implementation of Alternative A. TVA would also implement minimization and mitigation measures based on best management practices (BMP), permit requirements, and adherence to erosion and sediment control plans. TVA would utilize standard BMPs to minimize erosion during construction, operation, and maintenance activities. These BMPs are described in A Guide for Environmental Protection and BMPs for TVA Construction and Maintenance Activities—Revision 4 and the Tennessee Erosion and Sediment Control Handbook.

For those activities with potential to affect listed bats, TVA would commit to implement specific conservation measures previously approved by USFWS through TVA's programmatic consultation to ensure effects would not be significant. Relevant conservation measures that would be implemented as part of the approved project are listed in the bat strategy form (appendix L of the FEIS) and include a commitment to remove trees between November 15 and March 31 when listed bat species are not expected to be roosting in trees and when most migratory bird species of conservation concern are not nesting in the region.

TVA has committed to ensuring that the design of the Alternative A CC plant would enable and accommodate potential future modifications for carbon capture and the combustion of hydrogen as a replacement or supplemental fuel for natural gas, as and when these technologies mature to scale. The proposed CC plant would be designed to be 5 percent hydrogen capable at commissioning by adding balance of plant (BOP) equipment that includes areas for future hydrogen storage, appropriately sized piping, and a blending station during the original construction. TVA would also purchase a combustion turbine capable of burning at least 30 percent hydrogen, by volume, with modifications to the BOP once a hydrogen source is available. TVA would only consider burning hydrogen as a part of test burns or normal operations when it is commercially available at an acceptable chemical content that would reduce carbon emissions and be price-competitive in the market at that time.

It is important to note that once a viable option for future mitigation projects is identified, TVA would conduct additional analyses to determine proposed pipeline routes, costs, storage requirements, or other needs with hydrogen fuel incorporation. TVA would analyze the site-specific impacts associated with any future

mitigation that is planned as additional details become available.

Non-routine mitigation measures associated with cultural resources, specifically the historic Henry Hollister House, include adherence to the project specific MOA that has been executed for the Cumberland Retirement project. These mitigation measures include:

- Installation of a Tennessee Historical Marker
  - ○ TVA will submit a proposal for a historical marker through the Tennessee Historical Commission's (THC's) Historical Markers Program; work with THC staff regarding eligibility of the proposed marker for the program and regarding the marker's location and text; and install the marker, at TVA's expense, in an appropriate location, accessible by the public, near the Hollister House. The historical marker will present a brief narrative of the history and historic significance of the Hollister House.
- Vegetative Screening
  - ○ TVA will plant trees to screen views to the new facilities from the Hollister House.
  - ○ TVA will create the vegetative screening using various tree species, including native species, and including both deciduous and evergreen species.
  - ○ TVA will plant the vegetative screening on the south and east sides of the Hollister House, on TVA property.
  - ○ TVA will maintain the vegetative screening for so long as TVA owns and operates the new CC plant, so that it may provide the visual screen in perpetuity.
- Study of Graveyard Hill Cemetery
  - ○ TVA will complete a search for documents related to the Graveyard Hill Cemetery and the persons who may be buried there.
  - ○ The archival study will endeavor to include (but will not necessarily be limited to) the following sources: birth and death certificates, marriage certificates, deeds, census data, records of sales in the slave trade, and obituaries.
  - ○ TVA will also complete a delineation of the cemetery using one or more remote sensing methods and shall attempt to identify the boundaries of the cemetery and anomalies that could correspond to graves.
  - ○ TVA will prepare a report of the investigations and submit them to SHPO for review and comment and provide a final report that addresses any comments received from SHPO/THC.
- Updating the Hollister House National Register of Historic Places NRHP Registration Form
  - ○ TVA will update the Hollister House NRHP Registration Form, which was completed in 1987, with new information detailed in three historic architectural assessments performed between 2012 and 2022.
  - ○ The new information will include details of the history of the property and the associated cemeteries (Brunson/Hollister Cemetery and Graveyard Hill Cemetery), additional historic photographs, and information on the property's current condition, and the inclusion of any additional resources that TVA and SHPO agree in consultation are contributing resources to the Hollister House.
  - ○ TVA will provide the updated form to the THC for review, and upon approval, to the NPS.

Dated: January 10, 2023.

Jeff Lyash,

President & Chief Executive Officer, Tennessee Valley Authority.

[FR Doc. 2023–01102 Filed 1–19–23; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–2]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA will seek approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before March 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0537) in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, at email: *Hodan.Wells@dot.gov* or telephone: (202) 868–9412.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8–1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal statutes and regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Abstract: Title 49 CFR part 207 requires railroads to notify States of all designated police officers who perform duties in their respective jurisdictions who were commissioned as police officers by another State or States. This is necessary to verify proper police authority.

In this 60-day notice, FRA made multiple adjustments which increased the previously approved burden hours from 11 hours to 18 hours. For instance:

• Under §§ 207.4(a), 207.4(b), and 207.6, the combined burden increased from 11 hours to 15.84 hours because of an increase in number of responses—from 100 to 150 updated notices and records per year. FRA's estimate is based on the anticipated increase in law enforcement in the railroad industry.

• FRA also added a new burden under § 207.4(b) to capture railroads' responses to FRA's inquiries regarding program review of the notification process.

Type of Request: Extension without change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 784 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total annual dollar cost equivalent (D) = C * wage rates [1]
207.4(a)—RR Notice to State Officials—Written notice of RR police officer's commission to each State in which the RR police officer shall protect the railroad's property, personnel, passengers, and cargo.	784 railroads	50 written notices	15 minutes	12.50 hours	$973.88
207.4(b)—RR copy of written notices to State officials	784 railroads	50 records	2 minutes	1.67 hours	130.11
—RR copy of written notices to State officials—RR's email verification in response to FRA's inquiry for program review.	784 railroads	50 verifications	2 minutes	1.67 hours	130.11
207.6—Transfers—Application by RR police officers for new State certification/commission when transferring primary employment or residence from one State to another.	784 railroads	50 records	2 minutes	1.67 hours	130.11
Total [2]	784 railroads	200 responses	N/A	18 hours	1,364

[1] The dollar equivalent cost is derived from the 2021 Surface Transportation Bureau's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge. For Professional/Administrative staff, this cost amounts to $77.91 per hour.
[2] Totals may not add due to rounding.

Total Estimated Annual Responses: 200.

Total Estimated Annual Burden: 18 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $1,364.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2023–01046 Filed 1–19–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–1]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA will seek approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before March 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on regulations.gov to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0534) in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, at email: *Hodan.Wells@dot.gov* or telephone: (202) 868–9412.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8–1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal statutes and regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Grade Crossing Signal System Safety Regulations.

OMB Control Number: 2130–0534.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced when railroads take certain actions, as required by FRA's regulations, in the event of an activation failure.[1] These required actions are set forth in 49 CFR part 234. An activation failure is defined as when a grade crossing warning system fails to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing or to indicate the presence of a train occupying the crossing. Specifically, railroads must report to FRA every impact between on-track railroad equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing involving a crossing warning system activation failure. Notification must be provided to the National Response Center within 24 hours of occurrence at the stipulated toll-free telephone number. Additionally, railroads must report to FRA within 15 days of each activation failure of a highway-rail grade warning system. Form FRA F 6180.83, ''Highway-Rail Grade Crossing Warning System Activation Failure Report,'' must be used for this purpose and completed using the instructions printed on the form. With this information, FRA can identify the causes of activation failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective.

In this 60-day notice, FRA made no adjustments to the previously approved burden hours.

Type of Request: Extension without change (revised estimates) of a currently approved collection.

Affected Public: Businesses (railroads).

Form(s): FRA F 6180.83.

Respondent Universe: 784 railroads.

Frequency of Submission: On occasion/monthly.

Reporting Burden:

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates)[2]
234.7—Accidents involving grade crossing signal failure—Telephone notification.	784 railroads	2 phone calls	2 minutes	.1 hours	$7
234.9—Grade crossing signal system failure reports—Form 6180.83.	784 railroads	250 reports	10 minutes	42 hours	3,030
234.105/106/107—Activation failure/partial activation/false activation—Notification to train crew and law enforcement due to credible report of warning system malfunction.	784 railroads	30,000 notifications	5 minutes	2,500 hours	180,350
234.109—Recordkeeping	784 railroads	30,000 records	5 minutes	2,500 hours	180,350
Total[3]	784 railroads	60,252 responses	N/A	5,042 hours	363,737

[2] The dollar equivalent cost is derived from the 2021 STB Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge. For Transportation (Other than Train & Engine) staff, this cost amounts to $72.14 per hour.

[3] Totals may not add due to rounding.

Total Estimated Annual Responses: 60,252.

Total Estimated Annual Burden: 5,042 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $363,737.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2023–01045 Filed 1–19–23; 8:45 am]

BILLING CODE 4910–06–P

[1] 59 FR 50086.

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2023–0004]

Agency Information Collection Activity Under OMB Review: 49 U.S.C. Section 5337 State of Good Repair Program

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

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before February 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200

New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On November 10, 2022, FTA published a 60-day notice (87 FR 67996) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: 49 U.S.C. Section 5337 State of Good Repair Program.

OMB Number: 2132–0577.

Background: 49 U.S.C. 5337, the State of Good Repair Grants Program authorizes the Secretary of Transportation to make grants to designated recipients to maintain, replace, and rehabilitate high intensity fixed guideway systems and high intensity motorbus systems in a state of good repair. Projects that are eligible for the State of Good Repair Program funds must be in a recipient's Transit Asset Management plan. Eligible recipients include state and local governmental authorities in urbanized areas with high intensity fixed guideway systems and/or high intensity motorbus systems operating for at least seven years. Projects are funded at 80 percent federal with a 20 percent local match requirement by statute. FTA will apportion funds to designated recipients. The designated recipients will then allocate funds as appropriate to recipients that are public entities in the urbanized areas. FTA can make grants to direct recipients after sub-allocation of funds. Recipients apply for grants electronically, and FTA collects milestone and financial status reports from designated recipients on a quarterly basis. The Competitive Rail Vehicle Replacement Grant (Rail Program) is a discretionary grant program to assist in funding the replacement of rail rolling stock. The Rail Program (49 U.S.C. 5337(f)) a set-aside of the State of Good Repair Formula Grants Program (49 U.S.C. 5337).

The information submitted ensures FTA's compliance with applicable federal laws.

Respondents: States and local governmental authorities.

Estimated Annual Number of Responses: 1,097.

Estimated Total Respondents: 68.

Estimated Total Annual Burden: 13,729 hours

Frequency: Annual.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2023–01100 Filed 1–19–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2023–0002]

Agency Information Collection Activity Under OMB Review: Enhanced Mobility of Seniors and Individuals With Disabilities & Nonurbanized Area Formula Program

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

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before February 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On November 10, 2022, FTA published a 60-day notice (87 FR 67993) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for

public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: 49 U.S.C. Section 5310-Enhanced Mobility of Seniors and Individuals with Disabilities & Section 5311-Nonurbanized Area Formula Program.

OMB Number: 2132–0500.

Background: 49 U.S.C. 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Program provides formula funding to states and designated recipients to meet the transportation needs of older adults and people with disabilities when the transportation service provided is unavailable, insufficient, or inappropriate to meeting these needs. Funds are apportioned based on each state's share of the population for these two groups. Formula funds are apportioned to designated recipients; for rural and small urban areas, this is the state Department of Transportation or a local government entity that operates a public transportation service, while in large urban areas, a designated recipient is chosen by the governor. Designated recipients have flexibility in how they select subrecipient projects for funding, but their decision process must be clearly noted in a state/program management plan. The selection process may be formula-based, competitive or discretionary, and subrecipients can include states or local government authorities, private non-profit organizations, and/or operators of public transportation.

The program aims to improve mobility for older adults and people with disabilities by removing barriers to transportation service and expanding transportation mobility options. This program supports transportation services planned, designed, and carried out to meet the special transportation needs of seniors and individuals with disabilities in all areas—large urbanized (over 200,000), small urbanized (50,000–200,000), and rural (under 50,000). Eligible projects include both ''traditional'' capital investment and ''nontraditional'' capital or operating investment beyond the Americans with Disabilities Act (ADA) complementary paratransit services.

49 U.S.C. 5311—Formula Grants for Rural Areas Program provides capital, planning, and operating assistance to states to support public transportation in rural areas with populations of less than 50,000, where many residents often rely on public transit to reach their destinations. The program also provides funding for state and national training and technical assistance through the Rural Transportation Assistance Program. Eligible direct recipients are States and Indian Tribes. Eligible subrecipients include states and local governmental authorities, nonprofit organizations, and operators of public transportation or intercity bus service. The Tribal Transit program provides funding directly to federally recognized Indian Tribes for capital, operating, and planning purposes, through a formula and a competitive program.

Respondents: States or local governmental entities that operate a public transportation service, federally recognized Indian Tribes, and designated recipients; or eligible subrecipients.

Estimated Annual Number of Respondents: 517 respondents.

Estimated Total Annual Burden: 54,133 hours.

Frequency: Annual.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2023–01099 Filed 1–19–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2023–0003]

Agency Information Collection Activity Under OMB Review: Bus and Bus Facilities Program

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

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before February 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On November 10, 2022, FTA published a 60-day notice (87 FR 67996) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: 49 U.S.C. Section 5339 Bus and Bus Facilities Program.

OMB Number: 2132–0576.

Background: The Buses and Bus Facilities Program (49 U.S.C. 5339) makes federal resources available to states, designated recipients, and local governmental entities that operate fixed route bus service to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities including technological changes or innovations to modify low- or no- emission vehicles or facilities. Funding is provided through formula allocations and competitive grants. Two sub-programs provide competitive grants for buses and bus facility projects, including one that supports low and zero-emission vehicles. Under this renewal FTA will seek to update the name of this information collection to Buses and Bus Facilities Formula, Competitive and Low or No Emissions Program to coincide with eligible funding activities.

Respondents: State or local governmental entities; and federally recognized Indian tribes that operate fixed route bus service that are eligible to receive direct grants under 5307 and 5311.

Estimated Annual Number of Respondents: 1035 respondents.

Estimated Annual Number of Responses: 1035 responses.

Estimated Total Annual Burden: 56,734 hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2023–01097 Filed 1–19–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2023–0005]

Agency Information Collection Activity Under OMB Review: National Transit Asset Management (TAM) System

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection: National Transit Asset Management (TAM) System.

DATES: Comments must be submitted before February 21, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tamalynn Kennedy at (202) 366–7573, or email *tamalynn.kennedy@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On November 10, 2022, FTA published a 60-day notice (87 FR 67994) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: National Transit Asset Management (TAM) System.

OMB Number: 2132–0579.

Background: Transit Asset Management (TAM) is a business model that prioritizes funding based on the condition of transit assets to achieve and maintain a state of good repair for the nation's public transportation assets. The TAM program enables transit agencies to implement strategic approaches to monitoring, maintaining, and replacing transit assets. Federal requirements for transit asset management applies to all recipients and sub-recipients of Chapter 53 funds that own, operate, or manage public transportation capital assets. It is a framework for transit agencies to monitor and manage public transportation assets, improve safety,

increase reliability and performance, and establish performance measures in order to help agencies keep their systems operating smoothly and efficiently. FTA's TAM rule requires transit agencies to develop a compliant TAM plan, set performance targets for capital assets, create data and narrative reports on performance measures, and coordinate with their planning partners. Transit agencies are required to submit their performance measures and targets to the National Transit Database.

Respondents: All recipients and sub-recipients of Chapter 53 funds that own, operate, or manage public transportation capital assets.

Estimated Annual Number of Respondents: 2,915.

Estimated Annual Number of Responses: 932.

Estimated Total Annual Burden: 378,004.

Frequency: Annual.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2023–01098 Filed 1–19–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0525]

Agency Information Collection Activity Under OMB Review: VA MATIC Enrollment/Change

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs, 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. 2900–0525.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0525'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA MATIC ENROLLMENT/CHANGE (2900–0525).

OMB Control Number: 2900–0525.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to enroll or change the account number and/or bank from which a VA MATIC deduction was previously authorized. The information requested is authorized by law, 38 U.S.C. 1908.

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 68813 on November 16, 2022, pages 68813 and 68814.

Affected Public: Individuals or Households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

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. 2023–01032 Filed 1–19–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0736]

Agency Information Collection Activity Under OMB Review: Authorization To Disclose Personal Information to a Third Party

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 (VBA), 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. 2900–0736.

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. 2900–0736'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 5 U.S.C. 552a and 38 U.S.C. 5701, 38 CFR 1.526(a) and 1.576(b).

Title: Authorization to Disclose Personal Information to a Third Party (VA Form 21–0845).

OMB Control Number: 2900–0736.

Type of Review: Reinstatement of a previously approved collection.

Abstract: VA Form 21–0845 is used to release information in its custody or control in the following circumstances: where the individual identifies the information and consents to its use; for the purpose for which it was collected or a consistent purpose (*i.e.,* a purpose which the individual might have reasonably expected). By law, VA must have a claimants or beneficiary's written permission (an ''authorization'') to use or give out claim or benefit information for any purpose that is not contained in VA's System of Records, 58VA21/22/28 Compensation, Pension, Education and Veterans Readiness and Employment Records. The claimant or beneficiary may revoke the authorization at any time, except if VA has already acted based on the claimant's permission.

No changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

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 216 on November 9, 2022, pages 67757 and 67758.

Affected Public: Individuals and households.

Estimated Annual Burden: 9,472 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 113,660.

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. 2023–01027 Filed 1–19–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10, that the Veterans and Community Oversight and Engagement Board (VCOEB) will meet on February 15–16, 2023, at 11301 Wilshire Boulevard, Building 500, Room 1281, Los Angeles, CA. The meeting sessions will begin, and end as follows:

Date	Time
February 15, 2023	8:30 a.m. to 5:00 p.m.—Pacific Daylight Time (Pacific Daylight Time).
February 16, 2023	8:30 a.m. to 4:00 p.m.—Pacific Daylight Time (PDT).

The meetings are open to the public and will be recorded.

The Board was established by the West Los Angeles Leasing Act of 2016 on September 29, 2016. The purpose of the Board is to provide advice and make recommendations to the Secretary of Veterans Affairs on identifying the goals of the community and Veteran partnership; improving services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and on the implementation of the Draft Master Plan approved by VA Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

On Wednesday, February 15, 2023, from 8:30 a.m. to 5:00 p.m., the Committee will meet in open session with key staff of the VA Greater Los Angeles Healthcare System, (VAGLAHS). The agenda will include mandatory Federal Advisory Committee Act 101 training for all Board members, followed by opening remarks from the Committee Chair, Executive Sponsor, and other VA officials. There will be a general update from the Director of the VA Greater Los Angeles Healthcare System (VAGLAHS). The Community Engagement and Reintegration Service Office will provide an overview of the diversity of medical and housing needs among homeless Veterans in L.A., housing resources necessary to meet the needs, and an update on services and strategy to provide the needed services to the new occupants. VAGLAHS will also present a comprehensive briefing on the implementation and initial results for the temporary housing call center, an update on the Enhanced Use Lease referral process, and CTRS enhancements. Each Enhanced Use Lease developer is scheduled to provide an updated status of ongoing construction to include projected completion date, proposed move in plan, current selected service provider, and details of the service plans.

On Thursday, February 16, 2023, the Board will reconvene in open session from 8:30 a.m. to 4:00 p.m., at 11301 Wilshire Boulevard, building 500, Room 1281, Los Angeles, CA, and receive a informative presentation from the ETS Sponsorship Program that promotes social welfare for transitioning service members, Veterans, and Veteran's communities. The Board has requested a status update from the Office of General Counsel on the naming guidance and current compliance for facilities located on the West Los Angles campus. The Board's subcommittees on Outreach and Community Engagement with Services and Outcomes, and Master Plan with Services and Outcomes will provide an out brief to the full Board and update on draft recommendations to be considered for forwarding to the SECVA.

Time will be allocated for receiving public comments on February 15, at 12:35 p.m. Individuals wishing to make public comments should contact Chihung Szeto at (562) 708–9959 or at *Chihung.Szeto@va.gov* and are requested to submit a 1–2-page summary of their comments for inclusion in the official meeting record. Only those members of the public (first 12 public comment registrants) who have confirmed registrations to provide public comment will be allowed to provide public comment. In the interest of time, each speaker will be held to 5-minute time limit. The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, from February 13 through February 17, 2023.

Members of the public not able to attend in person can attend the meeting via WEBEX by joining from the meeting link below. In person attendance will be in accordance with the Veterans Health Administration's COVID operations plan and Medical Center Director's health protection guidelines. The link will be active from 8:00 a.m.–5:45 p.m. (PDT) daily, 15—16 February 2023.

Join From the Meeting Link

https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=me553431bd297c23c9979e9e0991e776b

Join by Meeting Number

Meeting Number: (access Code) 2764 293 4373

Meeting Password: ADanwBJ6$34

Tap to join from a mobile device (attendees only): 14043971596, ,2764293437## USA Toll Number

Join by Phone

+14043971596 USA Toll Number

Global call-in numbers | Toll-free calling restrictions

Join from a video system or application: Dial *27642934373@veteransaffairs.webex.com.*

You can also dial 207.182.190.20 and enter your meeting number.

Need help? Go to *https://help.webex.com.*

Any member of the public seeking additional information should contact Mr. Eugene W. Skinner Jr. at (202) 631–7645 or at *Eugene.Skinner@va.gov.*

Dated: January 17, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–01080 Filed 1–19–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0820]

Agency Information Collection Activity Under OMB Review: Adaptive Sport Grant Application

AGENCY: National Veterans Sports Programs and Special Events, Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the National Veterans Sports Programs and Special Events (NVSPSE), Veterans Health Administration (VHA), 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. 2900–0820''.

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. 2900–0820'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 521A.

Title: Application for Adaptive Sports Grant, VA Form 10096.

OMB Control Number: 2900–820.

Type of Review: Recertification.

Abstract: Legal authority for this data collection is found under 38 U.S.C. 521A that authorizes and mandates the collection of data during the grant application, implementation to include quarterly and annual reporting, and closeout phases of the adaptive sports grant. Mandated collection of data allows measurement and evaluation of the adaptive sports grant program, the goal of which is providing adaptive sport opportunities for disabled veterans and members of the Armed Forces.

The information will be used by VA to evaluate multiple criteria to confirm grantee eligibility, to score grantee proposals according to application criteria, and to ensure program efficacy and appropriate use of grant funds. The application information will indicate whether and to what extent a grant program is likely to be successful in meeting the program's intent for providing adaptive sports opportunities for disabled veterans and members of the Armed Forces.

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 insert citation date: 87 FR 223 on November 21, 2022, pages 70906 and 70907.

Affected Public: Private sector non-profit.

Estimated Annual Burden: 83 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 250.

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. 2023–01003 Filed 1–19–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0904]

Agency Information Collection Activity Under OMB Review: Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SSG Fox SPGP)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs (VA), 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. 2900–0904.

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. 2900–0904'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SSG Fox SPGP), VA Forms 10–315a–b, 10–316a–f, and 10–317a–d.

OMB Control Number: 2900–0904.

Type of Review: Extension of a currently approved collection.

Abstract: On October 17, 2020, the Commander John Scott Hannon Veterans Mental Health Care Improvement Act of 2019, Public Law (Pub. L.) 116–171 (the Act), codified as a note to section 1720F of title 38, United States Code (U.S.C.), was enacted in law. Section 201 of the Act mandated VA establish the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program (SSG Fox SPGP) to reduce Veteran suicide through the provision of community-based grants to certain eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families.

In order to award grants under this program, and assess services and compliance with grants provided, VA requires submission of Applications for grants and Renewals of grants, Compliance Reports, Eligibility Screening, Intake Forms and Screenings, Participant Satisfaction Surveys, Program Exit Screenings, and Suicide Risk Screening Tools.

VA Form 10–315a—Application: This information is needed to award SSG Fox SPGP grants to eligible entities. The application requirements are consistent with section 201(f) of the Act and are designed to ensure that VA can fully

evaluate the ability of applicants to achieve the goals of the grant program.

VA Form 10–315b—Renewal Application: This data collection instrument has been developed for grantees to renew grants previously awarded. The renewal application allows VA to fully evaluate the ability of applicants to achieve the goals of the SSG Fox SPGP and proposed 38 CFR part 78. This information is used by VA to determine whether to award renewal funds to existing grantees.

VA Forms 10–316a–f—Compliance Reports: This collection of information is required to ensure grantees are complying with all program requirements set forth in proposed 38 CFR part 78 and their grant agreements. These reports allow VA to assess the provision of services under this grant program. The reports consist of Annual Performance Reports, Other Performance and Implementation Reports, Program & Budget Changes, Corrective Action Plans, Annual Financial Expenditure Reports, and Quarterly Financial Reports.

VA Form 10–317a—Eligibility Screening: This data is collected by grantee staff to determine eligibility for the grant program, prior to enrollment. The collection instrument includes suicide risk factors.

VA Form 10–317b—Intake Form & Screenings: This data collection instrument is used by grantee staff to collect demographic and military service. This information is used by the VA to identify trends of the Veteran population the grantees are servicing. In addition, the intake form includes the following screenings: Social Economic Status (SES); Patient Health Questionnaire (PHQ–9); Warwick-Edinburgh Mental Wellbeing Scale (WEMWS); General Self-Efficacy Scale (GSE); and Interpersonal Support Evaluation List (ISEL–12).

VA Form 10–317c—Participant Satisfaction Survey: This data collection instrument has been developed to capture participant feedback about services and to evaluate the SSG Fox SPGP. This information is used by VA to determine the satisfaction of Veterans participating in the grant program funded services and the effectiveness of those services provided under the SSG Fox SPGP.

VA Form 10–317d—Program Exit Screenings: These data collection instruments are used by grantee staff at the completion of the program to track the following screenings upon program exit: Social Economic Status (SES); Patient Health Questionnaire (PHQ–9); Warwick-Edinburgh Mental Wellbeing Scale (WEMWS); General Self-Efficacy Scale (GSE); and Interpersonal Support Evaluation List (ISEL–12).

Columbia Suicide Severity Rating Scale (C–SSRS): Suicide risk screening is administered by grantees using the existing C–SSRS to assess suicide risk of program participants.

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 215 on November 8, 2022, pages 67536 and 67537.

Total Annual Number of Responses = 30,205.

Total Annual Time Burden = 21,827 hours.

VA Form 10–315a—Application

Affected Public: Private Sector.
Estimated Annual Burden: 8,750 hours.
Estimated Average Burden per Respondent: 35 hours.
Frequency of Response: Once annually.
Estimated Number of Respondents: 250.

VA Form 10–315b—Renewal Application

Affected Public: Private Sector.
Estimated Annual Burden: 900 hours.
Estimated Average Burden per Respondent: 10 hours.
Frequency of Response: Once annually.
Estimated Number of Respondents: 90.

VA Form 10–316a—Annual Grantee Performance Report

Affected Public: Private Sector.
Estimated Annual Burden: 68 hours.
Estimated Average Burden per Respondent: 45 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 90.

VA Form 10–316b—Other Grantee Performance Report

Affected Public: Private Sector.
Estimated Annual Burden: 90 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: Twice annually.
Estimated Number of Respondents: 90.

VA Form 10–316c—Program Change Request

Affected Public: Private Sector.
Estimated Annual Burden: 45 hours.
Estimated Average Burden per Respondent: 15 minutes.
Frequency of Response: Twice annually.
Estimated Number of Respondents: 90.

VA Form 10–316d—Corrective Action Plan (CAP)

Affected Public: Private Sector.
Estimated Annual Burden: 13 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 25.

VA Form 10–316e—Annual Grantee Financial Report

Affected Public: Private Sector.
Estimated Annual Burden: 68 hours.
Estimated Average Burden per Respondent: 45 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 90.

VA Form 10–316f—Quarterly Grantee Financial Report

Affected Public: Private Sector.
Estimated Annual Burden: 90 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: Twice annually.
Estimated Number of Respondents: 90.

VA Form 10–317a—Eligibility Screening

Affected Public: Individuals or Households.
Estimated Annual Burden: 3,015 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: 67 times annually.
Estimated Number of Respondents: 90.

VA Form 10–317b—Intake Form & Screenings

Affected Public: Individuals or Households.
Estimated Annual Burden: 3,015 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: 67 times annually.
Estimated Number of Respondents: 90.

VA Form 10–317c—Participant Satisfaction Survey

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 5,000.

VA Form 10–317d—Program Exit Screenings

Affected Public: Individuals or Households.

Estimated Annual Burden: 3,015 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: 67 times annually.

Estimated Number of Respondents: 90.

Columbia Suicide Severity Rating Scale (C–SSRS)

Affected Public: Individuals or Households.

Estimated Annual Burden: 1,508 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: 67 times annually.

Estimated Number of Respondents: 90.

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. 2023–01016 Filed 1–19–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0205]

Agency Information Collection Activity: Applications and Appraisals for Title 38 Health Care Positions and Trainees

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 21, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Grant Bennett, Office of Regulations, Appeals, and Policy (10BRAP), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Grant.Bennett@va.gov.* Please refer to ''OMB Control No. 2900–0205'' 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. 2900–0205'' 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, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Applications and Appraisals for Title 38 Health Care Positions and Trainees, VA Forms 10–2850, 10–2850a, 10–2850c, 10–2850d, and 10–2850e.

OMB Control Number: 2900–0205.

Type of Review: Extension of a currently approved collection.

Abstract: The collection of this information is authorized by title 38, United States Code (U.S.C.) 7403, (Veterans' Benefits), which provides that appointments of title 38 employees will be made only after qualifications have been satisfactorily verified in accordance with regulations prescribed by the Secretary. Occupations listed in 38 U.S.C. 7401(1) and 7401(3) (Appointments in Veterans Health Administration), are appointed at a grade and step rate or an assignment based on careful evaluation of their education and experience.

VA Forms 10–2850, 10–2850a, and 10–2850c are applications designed specifically to elicit appropriate information about each candidate's qualifications for employment with Department of Veterans Affairs (VA) as well as educational and experience. To assure that a full evaluation of each candidate's credentials can be made prior to employment, the forms require disclosure of details about all licenses ever held, Drug Enforcement Administration certification, board certification, clinical privileges, revoked certification or registration, liability insurance history, and involvement in malpractice proceedings. Form 10–2850d is used to collect appropriate information about qualifications for each trainee participating in accredited educational programs with VA. VA Form 10–2850e is the pre-employment reference form used to elicit information concerning the prior education and/or performance of the Title 38 applicant. This collection of information is necessary to determine eligibility for employment and the appropriate grade and step rate or assignment.

a. VA Form 10–2850, Application for Physicians, Dentists, Podiatrists, Optometrists, and Chiropractors, will collect information used to determine eligibility for appointment to VHA.

b. VA Form 10–2850a, Application for Nurses and Nurse Anesthetists, will collect information used to determine eligibility for appointment to VHA.

c. VA Form 10–2850c, Application for Associated Health Occupations, will collect information used to determine eligibility for appointment to VHA.

d. VA Form 10–2850d, Health Professions Trainee Data Collection Form, will collect information used to support eligibility for trainee appointment to VHA.

e. VA Form 10–2850e, Appraisal of Applicant, will collect information used to determine if applicant meets the requirements for employment.

Total Annual Number of Responses: 273,963.

Total Annual Time Burden: 136,982 hours.

VA Form 10–2850

Affected Public: Individuals and households.

Estimated Annual Burden: 8,064 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 16,128.

VA Form 10–2850a

Affected Public: Individuals and households.
Estimated Annual Burden: 32,256 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 64,511.

VA Form 10–2850c

Affected Public: Individuals and households.
Estimated Annual Burden: 10,752 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 21,504.

VA Form 10–2850d

Affected Public: Individuals and households.
Estimated Annual Burden: 60,500 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 121,000.

VA Form 10–2850e

Affected Public: Individuals and households.
Estimated Annual Burden: 25,410 hours.
Estimated Average Burden per Respondent: 30 minutes.
Frequency of Response: Once annually.
Estimated Number of Respondents: 50,820.

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. 2023–01008 Filed 1–19–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10, that the Advisory Committee on the Readjustment of Veterans will meet in person and virtually on February 7, 2023–February 9, 2023.

The sessions will begin, and end as follows in the noted locations:

Dates	Locations	Times	Open session
February 7, 2023	Chula Vista Vet Center, 180 Otay Lakes Road, Unit 108, Bonita, CA.	8:00 a.m. to 4:00 p.m. Pacific Standard Time (PST).	No.
February 8, 2023	San Marcos Vet Center, 1 Civic Center Drive, Suite 150, San Marcos, CA 92069–2934.	8:00 a.m. to 9:30 p.m. PST	No.
February 8, 2023	San Diego VA Benefits, Regional Office, 8810 Rio San Diego Drive, San Diego, CA 92108.	10:15 a.m. to 4:00 p.m. PST	Yes.
February 9, 2023	San Diego VA Benefits, Regional Office, 8810 Rio San Diego Drive, San Diego, CA 92108.	8:00 a.m. to 4:00 p.m. PST	Yes.

The meeting sessions are open to the public, except when the Committee is conducting tours of VA facilities. Tours of VA facilities are closed to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. 552b(c)(6).

The purpose of the Committee is to advise the VA regarding the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee shall take into account the needs of Veterans who served in combat theaters of operation. The Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment.

The Committee, comprised of 13 subject matter experts, advises the Secretary, through the VA Readjustment Counseling Service, on the provision by VA of benefits and services to assist Veterans in the readjustment to civilian life. In carrying out this duty, the Committee assembles, reviews, and assesses information relating to the needs of Veterans readjusting to civilian life and the effectiveness of VA services in assisting Veterans in that readjustment, specifically taking into account the needs of Veterans who served in combat theaters of operation.

On February 7, 2023, the agenda will include a site visit of the Chula Vista Vet Center, 180 Otay Lakes Road, Unit 108, Bonita, CA, from 8:00 a.m.–4:00 p.m. PST. The meeting session is closed to the public in accordance with 5 U.S.C. 552b(c)(6). Exemption 6 permits the Committee to close a meeting that is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, which will most likely be the case throughout this field visit.

On February 8, 2023, the agenda will include a visit with the Readjustment Counseling Team of the San Marcos Vet Center, 1 Civic Center Drive, Suite 150, San Marcos, CA 92069–2934 from 8:00 a.m. to 9:30 a.m. PST. This portion of the meeting will be closed to the public in accordance with 5 U.S.C. 552b(c)(6). Exemption 6 permits the Committee to close a meeting that is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, which will most likely be the case throughout this field visit. From 10:15 a.m. to 4:00 p.m. PST, the meeting will reconvene in an open session at the San Diego VA Regional Benefits Office located at 8810 Rio San Diego Drive, San Diego, CA 92108. During this session, the agenda will include a briefing from the California National Guard Leadership Team and an overview from the California Department of Veterans Services.

On February 9, 2023, the session is open to the public and will be held at the San Diego VA Benefits Regional Office, 8810 Rio San Diego Drive, San Diego, CA 92108. The agenda will include presentations from the RCS District 5 Leadership and RCS Strategy and Analysis Office. Additionally, the Committee will be solely focused on writing the 23rd Annual Report, which will be accomplished through breakout groups and open full committee discussion.

No time will be allotted for receiving oral comments from the public; however, the committee will accept written comments from interested parties on issues outlined in the meeting agenda or other issues regarding the readjustment of Veterans. Parties should contact Mr. Richard Barbato, via email at *VHARCSPlanningPolicy@va.gov* or by mail at Department of Veterans Affairs, Readjustment Counseling Service (10RCS), 810 Vermont Avenue, Washington, DC 20420.

Any member of the public seeking additional information should contact Mr. Barbato at the email addressed noted above. For any members of the public that wish to attend the open portions of the virtual meeting, they may use the following WebEx link: *https://veteransaffairs.webex.com/wbxmjs/joinservice/sites/veteransaffairs/meeting/download/f801e68c030b4cd7b7183e952f32a2c4?siteurl=veteransaffairs&MTID=m5880a9d5ab7017367539ba2694c2017f.*

Dated: January 17, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–01038 Filed 1–19–23; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 88 Friday,

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Part II

Securities and Exchange Commission

17 CFR Part 242

Disclosure of Order Execution Information; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–96493; File No. S7–29–22]

RIN 3235–AN22

Disclosure of Order Execution Information

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing to amend existing requirements under the Securities Exchange Act of 1934 (''Exchange Act'') to update the disclosure required for order executions in national market system (''NMS'') stocks. First, the Commission is proposing to expand the scope of reporting entities subject to the rule that requires market centers to make available to the public monthly execution quality reports to encompass broker-dealers with a larger number of customers. Next, the Commission is proposing to modify the definition of ''covered order'' to include certain orders submitted outside of regular trading hours and certain orders submitted with stop prices. In addition, the Commission is proposing modifications to the information required to be reported under the rule, including changing how orders are categorized by order size as well as how they are categorized by order type. As part of the changes to these categories, the Commission is proposing to capture execution quality information for fractional share orders, odd-lot orders, and larger-sized orders. Additionally, the Commission is proposing to modify reporting requirements for non-marketable limit orders (''NMLOs'') in order to capture more relevant execution quality information for these orders by requiring statistics to be reported from the time such orders become executable. The Commission is also proposing to eliminate time-to-execution categories in favor of average time to execution, median time to execution, and 99th percentile time to execution, each as measured in increments of a millisecond or finer and calculated on a share-weighted basis. In order to better reflect the speed of the marketplace, the Commission is proposing that the time of order receipt and time of order execution be measured in increments of a millisecond or finer, and that realized spread be calculated at both 15 seconds and one minute. Finally, the Commission is proposing to enhance the accessibility of the required reports by requiring all reporting entities to make a summary report available.

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 (*http://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–29–22 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 S7–29–22. 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 (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. All comments received will be posted without change. Persons submitting comments are cautioned that 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 the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Kathleen Gross, Senior Special Counsel, Lauren Yates, Senior Special Counsel, Christopher Chow, Special Counsel, or David Michehl, Special Counsel, at (202) 551–5500, Division of Trading and Markets, Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to 17 CFR 242.600 of Regulation National Market System (''Regulation NMS'') under the Exchange Act (''Rule 600'') to add new defined terms to and modify certain existing defined terms in Rule 600 that are used in 17 CFR 242.605 of Regulation NMS under the Exchange Act (''Rule 605'' or ''Rule'') as proposed to be amended; as well as amendments to Rule 605.

Table of Contents

I. Introduction
II. Current Reporting of Execution Quality Statistics
A. Adoption of Rule 11Ac1–5
B. Scope and Content of Rule 605
1. Scope
2. Required Information
3. Procedures for Making Reports Available to the Public
C. Other Relevant Rules
D. Overview of Need for Modernization
E. EMSAC Recommendations, Petition for Rulemaking, and Other Comments
III. Proposed Modifications to Reporting Entities
A. Larger Broker-Dealers
B. Qualified Auction Mechanisms
C. ATSs and Single-Dealer Platforms
IV. Proposed Modifications to Scope of Orders Covered and Required Information
A. Covered Order
1. Orders Submitted Pre-Opening/Post-Closing
2. Stop Orders
3. Non-Exempt Short Sale Orders
B. Required Information
1. Categorization by Order Size
2. Categorization by Order Type
3. Timestamp Conventions
4. Changes to Information Required for All Types of Orders
5. Additional Required Information for Market, Marketable Limit, Marketable IOC, and Beyond-the-Midpoint Limit Orders
6. Additional Required Information for Executable NMLOs, Executable Stop Orders, and Beyond-the-Midpoint Limit Orders
V. Proposed Summary Execution Quality Reports
VI. Paperwork Reduction Act
A. Summary of Collection of Information
B. Proposed Use of Information
C. Respondents
D. Total PRA Burdens
E. Request for Comment
VII. Economic Analysis
A. Introduction
B. Market Failure
C. Baseline
1. Regulatory Baseline
2. Current Rule 605 Disclosure Requirements
3. Markets for Brokerage and Trading Services for NMS Stocks Under Current Rule 605 Disclosure Requirements
D. Economic Effects
1. Benefits
2. Costs

3. Economic Effects on Efficiency, Competition, and Capital Formation
E. Reasonable Alternatives
1. Reasonable Alternative Modifications to Reporting Entities
2. Reasonable Alternative Modifications to Scope of Covered Orders
3. Reasonable Alternative Modifications to Required Information
4. Reasonable Alternative Modifications to Accessibility
5. Other Reasonable Alternatives
F. Request for Comment
VIII. Consideration of Impact on the Economy
IX. Initial Regulatory Flexibility Analysis
Statutory Authority and Text of Proposed Rule

I. Introduction

The Commission is proposing to update the requirements to disclose order execution information under Rule 605. Currently, market centers that execute investor orders are required to make monthly disclosures of basic information concerning their quality of executions. The required disclosures have provided significant insight into execution quality at different market centers; however, both the scope and the content of Rule 605 reports have not kept pace with technological and market developments. The proposal would require broker-dealers with a larger number of customers (''larger broker-dealers'') [1] to prepare execution quality reports, would capture execution quality information for more order types and sizes, and would require time-based metrics to be recorded at a more granular level that reflects current market speed. By providing more relevant and accessible metrics, the proposal would better promote competition among market centers and broker-dealers on the basis of execution quality and ultimately improve the efficiency of securities transactions, consistent with the national market system objectives.[2]

The national market system objectives of section 11A of the Exchange Act include the economically efficient executions of securities transactions; fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; the availability of information on securities quotations and transactions; and the practicability of brokers executing investor orders in the best market.[3] These objectives guide the Commission as it seeks to ensure market structure rules keep pace with continually changing economic conditions and technological advancements. However, these objectives, in particular the goal of promoting opportunities for the most willing seller to meet the most willing buyer (*i.e.,* order interaction) and the goal of promoting competition among markets, can be difficult to reconcile.[4] The Rule, along with 17 CFR 242.606 (''Rule 606'') of Regulation NMS, was adopted in 2000 and together these rules required the public disclosure of execution quality and order routing practices.[5] In adopting these rules, the Commission recognized the importance of vigorous competition among buyers and sellers in an individual security.[6] However, the Commission also recognized the importance of competition among market centers, which entails some fragmentation of order flow.[7] Such competition has benefits to investors including the development of innovative trading services, lower fees, and faster executions.[8] The Commission characterized the rules as a ''minimum step necessary to address fragmentation'' [9] and stated that by making visible the execution quality of the securities markets, the rules are intended to spur more vigorous competition among market participants to provide the best possible prices for investor orders.[10]

Although the Rule has provided visibility into execution quality at different market centers, the content of the disclosures required by the Rule has not been substantively updated since the Rule was adopted in 2000.[11] Changed equity market conditions and technological advancements have eroded the utility of the Rule. The speed and nature of trading have changed dramatically as a result of technological improvements and the markets' response to the changing regulatory landscape.[12] Trading has moved from being concentrated on a given security's listing exchange [13] to being spread across a highly fragmented market where national securities exchanges, alternative trading systems (''ATSs''), single-dealer platforms (''SDPs''), off-exchange market makers, and others compete for order flow. Orders may be matched, routed, or cancelled in microseconds and market information is transmitted nearly instantaneously. At the same time, individual investor [14] participation in the equity markets has increased.[15] Further, the average share prices of certain stocks have continued to increase over time.[16]

The Commission continues to believe that facilitating the ability of the public to compare and evaluate execution quality among different market centers is an effective means of reconciling the need to promote both vigorous price competition and fair competition among market centers. Providing increased visibility into the execution quality of larger broker-dealers would similarly encourage competition among market participants. It is the Commission's task continually to monitor market conditions and competitive forces and to evaluate whether the structure of the national market system as it evolves is achieving its Exchange Act objectives.[17] Section 11A of the Exchange Act [18] grants the Commission authority to promulgate rules necessary or appropriate to assure the fairness and usefulness of information on securities

[1] Throughout the release, the term ''larger broker-dealer'' refers to a broker-dealer that meets or exceeds the ''customer account threshold,'' as defined in proposed Rule 605(a)(7). *See also infra* section III.A (discussing proposed Rule 605(a)(7)).

[2] 15 U.S.C. 78k–1.

[3] *See* 15 U.S.C. 78k–1(a)(1)(C).

[4] *See* Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594, 3597 (Jan. 21, 2010) (''Concept Release on Equity Market Structure'').

[5] *See* Securities Exchange Act Release No. 43590 (Nov. 17, 2000), 65 FR 75414, 75416 (Dec. 1, 2000) (Disclosure of Order Execution and Routing Practices) (''Adopting Release'').

[6] *See id.* at 75415.

[7] *See id.* at 75416.

[8] *See id.*

[9] *Id.*

[10] *See id.* at 75414.

[11] In 2018, the Commission amended Rule 600, 605, and 606 of Regulation NMS (''the 2018 Rule 606 Amendments''). The 2018 Rule 606 Amendments modified Rule 605 to require that the public order execution quality reports be kept publicly available for a period of three years. *See* Securities Exchange Act Release No. 84528 (Nov. 2, 2018), 83 FR 58338 (Nov. 19, 2018) (''2018 Rule 606 Amendments Release'').

[12] For example, since the adoption of the Rule in 2000, the Commission has periodically revised certain of its NMS rules, including the adoption of Regulation NMS in 2005. *See, e.g.,* Securities Exchange Act Release Nos. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release''); and 90610 (Dec. 9, 2020), 86 FR 18596 (Apr. 9, 2021) (''MDI Adopting Release'').

[13] For example, in January 2005, the New York Stock Exchange Inc. (''NYSE'') executed approximately 79.1% of the consolidated share volume in its listed stocks, compared to 25.1% in October 2009. *See* Concept Release on Equity Market Structure, 75 FR 3594 (Jan. 21, 2010) at 3595.

[14] As used in this release, the term ''individual investor'' will refer to natural persons that trade relatively infrequently for their own or closely related accounts.

[15] *See, e.g.,* Caitlin McCabe, ''New Army of Individual Investors Flexes Its Muscle,'' The Wall Street Journal (Dec. 30, 2020), *available at https://www.wsj.com/articles/new-army-of-individual-investors-flexes-its-muscle-11609329600.*

[16] *See* MDI Adopting Release, 86 FR at 18606–07 (citing Securities Exchange Act Release No. 88216 (Feb. 14, 2020), 85 FR 16726, 16739 (Mar. 24, 2020) (''MDI Proposing Release'') (stating that ''between 2004 and 2019, the average price of a stock in the Dow Jones Industrial Average nearly quadrupled'')).

[17] *See* Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577, 10585 (Feb. 28, 2000) (''Fragmentation Release'').

[18] 15 U.S.C. 78k–1.

transactions [19] and to assure that broker-dealers transmit and direct orders for the purchase or sale of qualified securities in a manner consistent with the establishment and operation of a national market system.[20] Through the proposed updates to Rule 605, the Commission seeks to promote increased transparency of order execution quality, increase the information available to investors, and help to promote competition among market centers and broker-dealers, while ameliorating the potentially adverse effects of fragmentation on efficiency, price transparency, best execution of investor orders, and order interaction.[21]

II. Current Reporting of Execution Quality Statistics

A. Adoption of Rule 11Ac1–5

When the Commission adopted Rule 11Ac1–5, which was later re-designated as Rule 605, in 2000, there was little publicly available information to enable investors to compare and evaluate execution quality among different market centers.[22] The Commission proposed and adopted Rule 11Ac1–5 together with Rule 11Ac1–6, which was later re-designated as Rule 606, requiring broker-dealers to disclose the identity of market centers to which they route orders on behalf of customers. When adopting these rules, the Commission stated that, taken together, they should significantly improve the opportunity for investors to evaluate what happens to their orders after they submit them to a broker-dealer for execution.[23] The Commission reasoned that competitive forces could then be brought to bear on broker-dealers both with respect to the explicit trading costs associated with brokerage commissions and the implicit trading costs associated with execution quality.[24] Rule 11Ac1–5 was intended to remedy an absence of public information about how broker-dealers responded to trade-offs between price and other factors, such as speed or reliability, and establish a baseline level of disclosure in order to facilitate cross-market comparisons of execution quality.[25]

B. Scope and Content of Rule 605

1. Scope

Currently, Rule 605 requires market centers to make available, on a monthly basis, standardized information concerning execution quality for covered orders in NMS stocks that they received for execution. Market centers must provide specified measures of execution quality, including effective spread, average amount of price improvement, number of shares executed, and speed of execution.[26]

(a) Market Centers

Regulation NMS defines the term ''market center'' to mean any exchange market maker,[27] OTC market maker,[28] ATS,[29] national securities exchange,[30] or national securities association.[31] This definition was intended to cover entities that hold themselves out as willing to accept and execute orders in NMS securities.[32] Further, a market center must report on orders that it ''received for execution from any person,'' which was intended to assign the disclosure obligation to an entity that controls whether and when an order will be executed.[33]

In many instances, broker-dealers accept orders from customers for execution and then route these customer orders to various execution venues, but do not execute customer orders directly. These broker-dealers generally do not fall within the definition of ''market center'' and therefore fall outside of the scope of Rule 605's reporting requirements.[34]

(b) Covered Orders

The covered order definition is limited by several conditions and exclusions in order to include those orders that provide a basis for meaningful and comparable statistical measures of execution quality. A ''covered order'' is defined to include any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when the national best bid and national best offer is being disseminated, and, if executed, is executed during regular trading hours.[35] This definition serves two purposes: (1) because the nature and execution quality for regular and after-hours trading differs, it avoids blending statistics for orders executed after-hours with those executed during the regular

[19] 15 U.S.C. 78k–1(c)(1)(B).

[20] 15 U.S.C. 78k–1(c)(1)(E).

[21] *See* Concept Release on Equity Market Structure, 75 FR 3594 (Jan. 20, 2010) at 3597.

[22] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75416. For clarity, when this release discusses the adoption of Rule 605, it is referring to the Adopting Release, *supra* note 5.

[23] *See id.* at 75414.

[24] *See id.* at 75419. Although it is difficult to isolate the effects of the Rule given the evolution of the equity markets over time, one academic study examining the introduction of Rule 605 found that the routing of marketable order flow by broker-dealers became more sensitive to changes in execution quality across market centers after Rule 605 reports became available. *See* Ekkehart Boehmer, Robert Jennings & Li Wei, *Public Disclosure and Private Decisions: Equity Market Execution Quality and Order Routing,* 20 Rev. Fin. Stud. 315 (2007) (''Boehmer et al.''). Another study attributed a significant decline in effective and quoted spreads following the implementation of Rule 605 to an increase in competition between market centers, who improved the execution quality that they offered in order to attract more order flow. *See* Xin Zhao & Kee H. Chung, *Information Disclosure and Market Quality: The Effect of SEC Rule 605 on Trading Costs,* 42 J. Fin. Quantitative Analysis, 657 (Sept. 2007) (''Zhao & Chung'').

[25] *See Adopting Release, 65 FR* 75414 (Dec. 1, 2000) at 75418, 75419. Data obtained from Rule 605 reports are used by the third parties including academics and the financial press to study a variety of topics related to execution quality, including liquidity measurement, exchange competition, zero commission trading, and broker-dealer execution quality. *See infra* notes 545–547 and accompanying text.

[26] *See* 17 CFR 242.605.

[27] ''Exchange market maker'' means any member of a national securities exchange that is registered as a specialist or market maker pursuant to the rules of such exchange. *See* 17 CFR 242.600(b)(32).

[28] ''OTC market maker'' means any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the United States, an NMS stock for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than a block size. *See* 17 CFR 242.600(b)(64).

[29] ''Alternative trading system'' or ''ATS'' means any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of 17 CFR 240.3b–16; and (2) That does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or (ii) Discipline subscribers other than by exclusion from trading. *See* 17 CFR 242.300(a). *See also* 17 CFR 242.600(b)(4) (stating that ''alternative trading system'' has the meaning provided in 17 CFR 242.300(a)).

[30] ''National securities exchange'' means any exchange registered pursuant to section 6 of the Exchange Act. *See* 17 CFR 242.600(b)(53).

[31] *See* 17 CFR 242.600(b)(46). ''National securities association'' means any association of brokers and dealers registered pursuant to section 15A of the Exchange Act. *See* 17 CFR 242.600(b)(52).

[32] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75421.

[33] *See id.*

[34] *See, e.g.,* 17 CFR 242.605(a) (monthly electronic reports by market centers). In some instances, broker-dealers accept orders from customers for execution and execute a small portion of their order flow internally (*e.g.,* fractional share orders), and therefore would fall within the definition of ''market center'' in Rule 600(b)(46) with respect to the portion of their order flow for which they hold themselves out as being willing to buy or sell for their own account on a regular or continuous basis. However, if, for example, they only act as a market center for orders smaller than 100 shares, then these market centers would not be required to prepare Rule 605 reports currently because the portion of their order flow for which they act as a market center would include only orders that fall below the smallest order size category (*i.e.,* 100 to 499 shares). *See* 17 CFR 242.600(b)(defining ''categorized by order size''); 17 CFR 242.605)(a)(1) (stating that a market center's monthly report ''shall be categorized by security, order type, and order size'').

[35] *See* 17 CFR 242.600(b)(22).

trading day; and (2) because many of the statistical measures included in the rule rely on the availability of the national best bid and offer (''NBBO'') at the time of order receipt, it excludes orders for which execution quality metrics could not be calculated.

Covered orders do not include any orders for which the customer requests special handling, which include, but are not limited to, market on open and market on close orders, stop orders, all or none orders, and ''not held'' orders.[36] The Commission reasoned that special handling instructions could skew general execution quality measures.[37]

2. Required Information

Rule 605 reports contain a number of execution quality metrics for covered orders, including statistics for all NMLOs with limit prices within ten cents of the NBBO at the time of order receipt as well as separate statistics for market orders and marketable limit orders. Under the Rule, the information is categorized by (1) individual security,[38] (2) one of five order types,[39] and (3) one of four order sizes.[40] These categories provide users flexibility in determining how to summarize and analyze the information.[41]

Within each of the three categories, the reports are required to include statistics about the total number of orders submitted as well as the total number of shares submitted, shares cancelled prior to execution, shares executed at the receiving market center, shares executed at another venue, shares executed within different time-to-execution buckets, and average realized spread.[42] For market and marketable limit orders, the reports also must include average effective spread; number of shares executed better than the quote, at the quote, or outside the quote; average time to execution when executed better than the quote, at the quote, or outside the quote; as well as average dollar amount per share that orders were executed better than the quote or outside the quote.[43] In addition, time of order execution and time of order receipt are required to be measured to the nearest second.[44]

The categorization by order type does not currently include away-from-the-quote NMLOs, *i.e.,* those orders with a limit price more than ten cents away from the NBBO. In proposing to exclude these orders in 2000, the Commission indicated that the execution quality statistics for these types of orders may be less meaningful because execution of these types of orders may be more dependent on the extent to which the orders' limit prices were outside the consolidated best bid and offer (''BBO'') and price movement in the market than on their handling by the market center.[45]

3. Procedures for Making Reports Available to the Public

The Rule 605 NMS Plan establishes procedures for market centers to make data available to the public in a uniform, readily accessible, and usable electronic form.[46] The Plan also requires market centers to post their monthly reports on an internet website that is free of charge and readily accessible to the public.[47] Generally, reports are posted on market centers' own websites; however, they may be posted on a third-party vendor site if a market center uses a vendor to prepare its reports.[48] In addition, formatting for Rule 605 data is governed by the Plan. Among other things, the Plan sets forth the file type and structure of the reports and the order and format of fields, yielding reports that are structured and machine-readable.[49]

C. Other Relevant Rules

Rule 606 reports address order handling information and Rule 606's reporting requirements differ for held orders versus not held orders. With respect to held orders, Rule 606(a)(1) requires broker-dealers to produce quarterly public reports regarding their routing of non-directed orders [50] in NMS stocks that are submitted on a held basis. These reports must identify certain regularly-used venues to which the broker-dealer routed non-directed orders for execution and provide data on the percentage of orders routed to each venue.[51] These reports also must provide information, for each venue identified, about the payment relationship between the broker-dealer and the venue, including any payments made by a venue to a broker-dealer for the right to trade with its customer order flow (*i.e.,* payment for order flow or ''PFOF'') or rebates,[52] and a description of the material aspects of the broker-dealer's relationship with the venue and the terms of arrangements that may influence a broker-dealer's order routing

[36] *See id.* Generally, a ''not held'' order provides the broker-dealer with price and time discretion in handling the order, whereas a broker-dealer must attempt to execute a ''held'' order immediately. *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58340. As a general matter, if a customer submits an order for an NMS stock to its broker-dealer, whether it be for a fractional share, whole shares, or whole shares with a fractional share component, and the customer reasonably expects its broker-dealer to attempt to execute such order immediately, then the broker-dealer generally should categorize the order as a held order.

[37] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75421.

[38] *See* 17 CFR 242.605(a)(1).

[39] *See id.* ''Categorized by order type'' refers to categorization by whether an order is a market order, a marketable limit order, an inside-the-quote limit order, an at-the-quote limit order, or a near-the-quote limit order. *See* 17 CFR 242.600(b)(14).

[40] *See* 17 CFR 242.605(a)(1). The current size categories are: 100 to 499 shares; 500 to 1999 shares; 2000 to 4999 shares, and 5000 or greater shares. *See* 17 CFR 242.600(b)(11). On June 22, 2001, the Commission granted exemptive relief to any order with a size of 10,000 shares or greater, reasoning that the exclusion of very large orders would help assure greater comparability of statistics in the largest size category of 5,000 or greater shares. *See* Letter from Annette L. Nazareth, Director, Division of Market Regulation to Darla C. Stuckey, Assistant Secretary, NYSE, dated June 22, 2001 (''Large Order Exemptive Letter'').

[41] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75417. For instance, a user could analyze execution quality for a group of securities and by size and order type.

[42] *See* 17 CFR 242.605(a)(1)(i).

[43] *See* 17 CFR 242.605(a)(1)(ii).

[44] *See* 17 CFR 242.600(b)(91), (92).

[45] *See* Securities Exchange Act Release No. 43084 (July 28, 2000), 65 FR 48406, 48414 (Aug. 8, 2000) (File No. S7–16–00) (Disclosure of Order Execution and Routing Practices) (''Proposing Release'') (stating that the Commission preliminarily believed that the rule's statistical measures (*e.g.,* fill rates and speed of execution) for this type of order may be less meaningful because they would be more dependent on the extent to which the orders' limit prices were outside the consolidated BBO (and movements in market prices) than on their handling by a market center).

[46] *See* 17 CFR 242.605(a)(2) and Securities and Exchange Commission File No. 4–518 (National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS) (''Rule 605 NMS Plan'' or ''Plan''). *See also* Securities Exchange Act Release No. 44177 (Apr. 12, 2001), 66 FR 19814 (Apr. 17, 2001) (order approving the Plan).

[47] Currently, the parties to the Plan are the 16 registered national securities exchanges trading NMS stocks and 1 national securities association (the ''Participants''). Although not all market centers are Participants, the Participants are required to enforce compliance with the terms of the Plan by their members and person associated with their members. *See* 17 CFR 242.608(c). Market centers that are not Participants must make arrangements with a Participant to act as their ''Designated Participant.'' *See* Plan at IV. Each market center must notify its Designated Participant of the website where its reports may be downloaded, and each Designated Participant must maintain a comprehensive list of links for all market centers for which it functions as a Designated Participant. *See* Plan at IV, VIII(c).

[48] *See* Plan at n.3.

[49] *See id.* at 2 (''Section V . . . provides that market center files must be in standard, pipe-delimited ASCII format'').

[50] 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).

[51] *See* 17 CFR 242.606(a)(1)(ii) (stating that each section in the required report shall include the identity of the ten venues to which the largest number of total non-directed orders for the section were routed for execution and of any venue to which five percent or more of non-directed orders were routed).

[52] *See* 17 CFR 242.606(a)(1)(iii).

decision.[53] In addition, Rule 606(b)(1) requires broker-dealers to provide to their customers, upon request, reports that include high-level customer-specific order routing information, such as the identity of the venues to which the customer orders were routed for execution in the prior six months and the time of the transactions, if any, that resulted from such orders.[54] For orders submitted on a held basis, the reports required by Rule 606 do not contain any execution quality information. However, a customer of a reporting broker-dealer may access the execution quality reports produced pursuant to Rule 605 by each venue identified as a routing destination in the broker-dealer's Rule 606 reports, to the extent that venue is a market center.[55]

In contrast, Rule 606 requires broker-dealers to produce reports that provide detail regarding execution quality in connection with not held orders, which are typically used by institutional investors.[56] Specifically, Rule 606(b)(3) requires broker-dealers to produce reports pertaining to order routing 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.[57] These customer-specific reports generally must include detailed information, by venue, including metrics pertaining to the broker-dealer's routing of the customer's orders and the execution of such orders.[58] In particular, the venue-by-venue order execution information must include aggregated metrics such as fill rate, percentage of shares executed at the midpoint, and percentages of total shares executed that were priced on the side of the spread more favorable to the order and on the side of the spread less favorable to the order.[59]

Current Rule 606 reflects significant changes that were made in the 2018 Rule 606 Amendments.[60] When adopting the 2018 Rule 606 Amendments, the Commission identified intensified competition for customer orders, the rise in the number of trading centers, and the introduction of new fee models for execution services as the main concerns with held orders for NMS stocks that it sought to address with the proposal.[61] The Commission stated that the more prevalent use of financial inducements to attract order flow from broker-dealers that handle retail investor orders created new, and in many cases significant, potential conflicts of interests for these broker-dealers.[62] Further, the Commission stated that enhanced public disclosures for held orders should focus on providing more detailed information regarding these financial inducements, as opposed to the different information geared towards not held orders from customers that is set forth in Rule 606(b)(3).[63] Therefore, the Commission adopted enhanced public disclosures pursuant to Rule 606(a)(1) that focused on increased transparency for the financial inducements that broker-dealers face when determining where to route held order flow.[64] The Commission stated that this enhancement would allow customers to better assess the nature and quality of broker-dealers' order handling services, including the potential for broker-dealer conflicts of interest, and would also benefit customers to the extent that broker-dealers were spurred to compete further by providing enhanced order routing services and better execution quality.[65]

At the time of the 2018 Rule 606 Amendments, the Commission considered suggestions from the Equity Market Structure Advisory Committee (''EMSAC'') and other commenters that the Commission include more or different execution quality statistics in the required disclosures.[66] But the Commission stated that the limited modifications to Rule 606(a) that it was adopting were reasonably designed to further the goal of enhancing transparency regarding broker-dealers' order routing practices and customers' ability to assess the quality of those practices, and that the suggested execution quality statistics were not necessary to achieve that goal.[67] However, the Commission noted that its determination not to adopt the additional specific disclosures was not an indication that the Commission had formed a decision on the validity or usefulness of the suggested execution quality statistics.[68]

Separately, each broker-dealer has a legal duty to seek to obtain best execution of customer orders.[69] The

[53] *See* 17 CFR 242.606(a)(1)(iv).

[54] *See* 17 CFR 242.606(b)(1).

[55] *See supra* note 23 and accompanying text.

[56] *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58345 (stating that by using the not held order distinction, Rule 606(b)(3) as adopted will likely result in more Rule 606(b)(3) disclosures for order flow that is typically characteristic of institutional customers—not retail customers—and will likely cover all or nearly all of the institutional order flow). In contrast, held orders are typically used by individual investors. *See, e.g., id.* at 58372 (stating that retail investors' orders are typically submitted on a held basis and are typically smaller in size).

[57] *See* 17 CFR 240.606(b)(3).

[58] *See* 17 CFR 240.606(b)(3).

[59] *See* 17 CFR 240.606(b)(3)(ii).

[60] *See generally* 2018 Rule 606 Amendments Release.

[61] *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58372.

[62] *See id.*

[63] *See id.* The Commission also considered but did not adopt an aspect of the proposal that would have required broker-dealers to make publicly available a report that would have aggregated Rule 606(b)(3) order handling information pertaining to not held orders. *See id.* at 58369–70. The Commission stated that its decision stemmed from fundamental differences between held order flow and not held order flow, because held orders are typically non-directed orders with no specific order-handling instructions for the broker-dealer. *See id.* at 58371 (stating that held order flow is handled similarly by broker-dealers—held orders are generally small orders that are internalized or sent to OTC market makers if marketable or fully executed on a single trading center if not marketable). The Commission further stated that, by contrast, not held order flow is diverse and customers may provide specific order handling instructions to their broker-dealers, limit the order handling discretion of their broker-dealers, or have specific needs that impact the broker-dealers' handling of these orders. *See id.* Therefore, the Commission concluded that the disparate behavior of customers when using not held orders limited the potential ability for customers and broker-dealers to use aggregated Rule 606(b)(3) order handling information to better understand broker-dealers' routing behavior or compare broker-dealers' order routing performance. *See id.*

[64] *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58373.

[65] *See id.* In comparison, with respect to the addition of customer-specific order-handling disclosures in Rule 606(b)(3), the Commission stated that these disclosures are particularly suited to customers that submit not held NMS stock orders because the disclosures set forth detailed order handling information that is useful in evaluating how broker-dealers exercise the discretion attendant to not held orders and, in the process, carry out their best execution obligations and manage the potential for information leakage and conflicts of interest. *See id.* at 58344. As part of the 2018 Rule 606 Amendments, the Commission added Rule 606(b)(3) to require broker-dealers to make detailed, customer-specific order handling disclosures available to institutional customers, in particular, who previously were not entitled to disclosures under the rule for their order flow, or were entitled to disclosures that had become inadequate in a highly automated and more complex market. *See id.*

[66] *See id.* at 58379. *See also* EMSAC III at 2–3 (suggesting that the Commission modify the enhancements to Rule 606 to include, among other things, execution quality statistics by routing destination).

[67] *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58379.

[68] *See id.*

[69] *See, e.g.,* Regulation NMS Adopting Release, 70 FR at 37537; *Newton* v. *Merrill, Lynch, Pierce, Fenner & Smith, Inc.,* 135 F.3d 266, 269–70, 274 (3d Cir.), *cert. denied,* 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq,* Securities Exchange Act Release No. 40900, 53 SEC 1150, 1162 (1999) (settled case) (citing *Sinclair* v. *SEC,* 444 F.2d 399 (2d Cir. 1971); *Arleen Hughes,* 27 SEC 629, 636 (1948), *aff'd sub nom. Hughes* v. *SEC,* 174 F.2d 969 (D.C. Cir. 1949)). In addition, the Commission is separately proposing a rule concerning broker-dealers' duty of best execution. *See* Securities Exchange Act Release No. 96496 (Dec. 14, 2022) (File No. S7–32–22) (Regulation Best Execution). The Commission encourages commenters to review that proposal to determine whether it might affect their comments on this proposing release.

duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances.[70] When adopting Rule 605 and Rule 606, the Commission stated that these rules do not address and therefore do not change the existing legal standards that govern a broker-dealer's duty of best execution.[71] The Commission recognized that the information contained in the Rule 605 reports (and Rule 606 reports) will not, by itself, be sufficient to support conclusions regarding a broker-dealer's compliance with its legal responsibility to obtain the best execution of customer orders.[72] As the Commission stated, any such conclusions would require a more in-depth analysis of the broker-dealer's order routing practices than will be available from the disclosures required by the rules.[73]

D. Overview of Need for Modernization

The U.S. equity markets have evolved significantly since the Commission adopted the Rule in 2000. For instance, the equities markets have become increasingly fragmented, as both the market shares of individual national securities exchanges became less concentrated and an increased percentage of order flow moved off-exchange. In 2000, there were 9 registered national securities exchanges and one registered national securities association.[74] A large proportion of the order flow in listed equity securities was routed to a few, mostly manual, trading centers,[75] and the primary listing exchanges retained a high percentage of the order flow for exchange-listed equities.[76]

In contrast, trading in the U.S. equity markets today is highly automated and spread among different types of trading centers, allowing even more choices about where orders may be routed. The types of trading centers that currently trade NMS stocks are: (1) national securities exchanges operating SRO trading facilities;[77] (2) ATSs that trade NMS stocks (''NMS Stock ATSs'');[78] (3) exchange market makers; (4) wholesalers;[79] and (5) any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent.[80] In the first quarter of 2022, NMS stocks were traded on 16 national securities exchanges, and off-exchange at 32 NMS Stock ATSs and at over 230 other FINRA members.[81] National securities exchanges executed approximately 60% of NMS share volume.[82] The majority of off-exchange volume was executed by wholesalers, who executed almost one quarter of total volume (23.9%) and about 60% of off-exchange volume.[83] Some OTC market makers, such as wholesalers, operate SDPs through which they execute institutional orders in NMS stocks against their own inventory.[84]

Broker-dealers that primarily service the accounts of individual investors (referred to in this release as ''retail brokers'') often route the marketable orders of individual investors in NMS stocks to wholesalers.[85] The primary business model of wholesalers is to trade internally as principal with individual investor orders. They do not publicly display or otherwise reveal the prices at which they are willing to trade internally as a means to attract individual investor orders from broker-dealers. Moreover, it is generally more profitable for liquidity providers such as wholesalers to execute against orders with lower adverse selection risk because of the reduced risk that prices will move against the liquidity provider.[86] Wholesalers may provide different execution quality to different broker-dealers, depending on factors including the level of adverse selection risk of their order flow.[87]

Some retail brokers may face conflicts of interest when making order routing decisions, including whether to route to a particular wholesaler.[88] For example, broker-dealers could face conflicts of interest when making routing decisions due to their own affiliation with market centers (*e.g.,* if the broker-dealer operates its own ATS), from the presence of liquidity fees and rebates on some market centers, or from payments that some retail brokers receive from wholesalers to attract the order flow of

[70] *See* Regulation NMS Adopting Release, 70 FR 37496 (Jun. 29, 2005) at 37538 (referring to the best reasonably available price and citing *Newton,* 135 F.3d at 266, 269–70, 274). *Newton* also specified certain other factors relevant to best execution—order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. *See Newton,* 135 F.3d at 270 n.2.

[71] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75420.

[72] *See id.*

[73] *See id.* For example, the execution quality statistics included in Rule 605 do not encompass every factor that may be relevant in determining whether a broker-dealer has obtained best execution, and the statistics in a market center's reports typically will reflect orders received from a number of different routing broker-dealers. *See id. See also infra* notes 564–565 and accompanying text for discussion of an investment adviser's fiduciary duty, including the duty to seek best execution of a client's transactions where the investment adviser has the responsibility to select broker-dealers to execute client trades.

[74] *See* Securities and Exchange Commission, Annual Report for fiscal year 2000, at 38 *available at https://www.sec.gov/pdf/annrep00/ar00full.pdf.*

[75] *See* Securities Exchange Act Release No. 78309 (July 13, 2016), 81 FR 49432, 49436 (July 27, 2016) (''Rule 606 Proposing Release''); Fragmentation Release, 65 FR 10577 (Feb. 28, 2000) at 10579–80.

[76] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75415 (stating that in September 2000, for example, NYSE accounted for 83.3% of the share volume in NYSE equities and that the American Stock Exchange, LLC (''Amex'') accounted for 69.9% of share volume in Amex equities). *See also* Concept Release on Equity Market Structure, 75 FR 3594 (Jan. 21, 2010) at 3595 (stating that in January 2005, NYSE executed approximately 79.1% of the consolidated share volume in its listed stocks, as compared to 25.1% in October 2009). In addition, NYSE-listed stocks were traded primarily on the floor of the NYSE in a manual fashion until October 2006, at which time NYSE began to offer fully automated access to its displayed quotations. *See* Concept Release on Equity Market Structure, 75 FR 3594 (Jan. 21, 2010) at 3594–95. However, stocks traded on the NASDAQ Stock Market LLC (''NASDAQ''), which in 2000 was owned and operated by a national securities association, were already trading in a highly automated fashion at many different trading centers. *See id.* at 3595; Fragmentation Release, 65 FR 10577 (Feb. 28, 2000) at 10580.

[77] *See* 17 CFR 242.600(b)(89) (defining ''SRO trading facility'' as, among other things, a facility operated by a national securities exchange that executes orders in a security).

[78] An ''NMS Stock ATS'' as used in this release is an ATS that has filed an effective Form ATS–N with the Commission.

[79] The term ''wholesaler'' is not defined in Regulation NMS, but is commonly used to refer to an OTC market maker that seeks to attract orders from broker-dealers that service the accounts of a large number of individual investors.

[80] *See* 15 U.S.C. 78c(a)(4)(A) (defining ''broker'' generally as any person engaged in the business of effecting transactions in securities for the account of others); 15 U.S.C. 78c(a)(5)(A) (defining ''dealer'' generally as any person engaged in the business of buying and selling securities for such person's own account through a broker or otherwise). The term ''broker-dealer'' is used in this release to encompass all brokers, all dealers, and firms that are both brokers and dealers. *See also* 17 CFR 242.600(b)(95) (defining ''trading center'').

[81] *See infra* note 766 and accompanying text; Table 7.

[82] *See infra* note 767 and accompanying text; Table 7.

[83] *See infra* Table 7.

[84] *See infra* note 768 and accompanying text.

[85] There are six wholesalers that internalize the majority of individual investors' marketable orders. *See infra* note 766 and accompanying text.

[86] *See infra* note 608 and accompanying text.

[87] Analysis of Consolidated Audit Trail (''CAT'') data from the first five months of 2022 found that wholesalers provide different execution quality to different retail brokers, and in particular that broker-dealers with higher adverse selection risk systematically receive higher effective spreads and lower price improvement than broker-dealers with lower adverse selection risk. *See infra* notes 609–613 and accompanying text; Table 3. For further discussion of differences in execution quality across broker-dealers, *see infra* section VII.C.1.a).

[88] *See infra* section VII.C.3.a)(2). *See also* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58372 (stating that financial inducements to attract order flow from broker-dealers that handle retail investor orders have become more prevalent and for some broker-dealers such inducements may be a significant source of revenue); *supra* note 62 and accompanying text (stating that these financial inducements have created new, and in many cases significant, potential conflicts of interest for these broker-dealers).

their individual investor customers (PFOF).[89]

The Commission is concerned that variations in execution quality across broker-dealers may be difficult to assess using current Rule 605 and Rule 606 reports. In particular, broker-dealers that route customer orders externally, rather than executing customer orders internally, are not required to prepare Rule 605 reports because they do not meet the definition of market center. Customers of a broker-dealer can use Rule 606 reports to identify market centers to which the broker-dealer routes, and then access those market centers' Rule 605 reports to review the execution quality that the market center provides to all orders that the market center received for execution. However, to the extent that the market center may provide different execution quality to orders based on different order routing arrangements with different broker-dealers, current Rule 605 and 606 do not require reports that provide investors with a way to assess these differences.

In addition, developments in trading, including the increased speed of trading, further necessitate proposing updates to the Rule. Average stock prices have continued to increase over time,[90] and odd-lots [91] and fractional shares [92] continue to trade with increasing frequency. Similarly, odd-lot quotes in higher-priced stocks continue to offer prices that are frequently better than the round lot NBBO for these stocks,[93] and this better-priced odd-lot liquidity is distributed across multiple price levels.[94] In addition, odd-lot rates have increased among lower priced stocks.[95] Because current Rule 605 size categories exclude orders smaller than 100 shares, a significant proportion of market activity is currently excluded.[96] An analysis of Rule 605 data shows that Rule 605 coverage has likely declined in the decades since the initial adoption of Rule 605.[97] Further, because order size categories are tied to the number of shares, the categories may group orders of very different notional values, which may complicate comparisons of aggregate execution quality. Finally, the speed of the market has increased exponentially since 2000,[98] rendering the Rule's current one-second timestamp conventions less meaningful.

E. EMSAC Recommendations, Petition for Rulemaking, and Other Comments

The EMSAC [99] as well as commenters responding to the Commission's Concept Release on Equity Market Structure [100] and to the 2018 Rule 606 Amendments,[101] have recommended

[89] *See infra* notes 759–762 and accompanying text.

[90] *See supra* note 16.

[91] *See* MDI Adopting Release, 85 FR 18612 (Apr. 2, 2020) at 18616 (describing analyses included in the MDI Adopting Release confirming observations made in the MDI Proposing Release that a significant proportion of quotation and trading activity occurs in odd-lots, particularly for frequently traded, high-priced stocks). Analysis using the NYSE Trade and Quote database (obtained via Wharton Research Data Services (WRDS) (''TAQ data'' or ''NYSE TAQ data'') found that odd-lots increased from around 15% of trades in January 2014 to more than 55% of trades in March 2022. An analysis of data from the SEC's MIDAS analytics tool available at *https://www.sec.gov/marketstructure/datavis.html#.YoPskqjMKUk* shows that, in Q1 2022, odd-lots made up 81.2% of on-exchange trades (40% of volume) for stocks in the highest price decile and 25% of on-exchange trades (2.72% of volume) for stocks in the lowest price decile. *See* dataset ''Summary Metrics by Decile and Quartile'' *available at https://www.sec.gov/marketstructure/downloads.html.*

[92] Analysis using CAT data for executed orders in March 2022 found that an estimated 46.63 million originating orders with a fractional share component were eventually executed on- or off-exchange. This represents approximately 2% of all executed orders and 14% of executed orders from individual accounts. Generally, accounts classified as ''individual'' in CAT are attributed to natural persons. *See also infra* note 647 and accompanying text.

[93] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18729. In addition, a recent academic working paper shows that odd-lots offer better prices than the NBBO 18% of the time for bids and 16% of the time for offers. This percentage increases monotonically in the stock price, for example, for bid prices, increasing from 5% for the group of lowest-price stocks in their sample, to 42% for the group of highest-priced stocks. *See* Robert P. Bartlett, Justin McCrary, and Maureen O'Hara, The Market Inside the Market: Odd-Lot Quotes (Feb. 1, 2022), *available at* SSRN: *https://ssrn.com/abstract=4027099* (''Bartlett, et al.''). *See also* 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 January 2019 to January 2022).

[94] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18613 n.202 (describing analysis included in the MDI Adopting Release 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).

[95] 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, exchange-traded products (''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* SEC market structure analytics data, *available at https://www.sec.gov/marketstructure/midas.html.*

[96] *See supra* notes 91–92. *See also infra* notes 619–622 and accompanying text (estimating, based on analysis of Tick Size Pilot data, coverage of current Rule 605 reporting requirements).

[97] Analysis comparing one market center's volume (NYSE) to TAQ data shows that an estimated 50% of shares executed during regular market hours were included in Rule 605 reports as of February 2021, and shows that this number has been on a slightly downward trend since around mid-2012. *See infra* section VII.C.2.b) and *infra* Figure 3.

[98] Analysis of data from the SEC's MIDAS analytics tool shows that the percent of on-exchange NMLOs that are fully executed within one millisecond (as a percentage of all fully executed on-exchange NMLOs) has increased from 2.1% in Q1 2012 to 10.3% in Q1 2022 for small cap stocks, and from 5.9% in Q1 2012 to 15.7% in Q1 2022 for large cap stocks. Further, in Q1 2022 more than half (51.6%) of NMLOs executed in less than one second in large market cap stocks. *See* dataset ''Conditional Cancel and Trade Distribution,'' *available at https://www.sec.gov/marketstructure/downloads.html. See also infra* note 692 and accompanying text.

[99] *See* Transcript from EMSAC Meeting (Aug. 2, 2016), *available at https://www.sec.gov/spotlight/emsac/emsac-080216-transcript.txt* (''EMSAC I''); Transcript from EMSAC Meeting (Nov. 29, 2016), *available at https://www.sec.gov/spotlight/equity-market-structure/emsac-transcript-112916.txt* (''EMSAC II''); EMSAC Recommendations Regarding Modifying Rule 605 and Rule 606 (''EMSAC III''), Nov. 29, 2016, *available at https://www.sec.gov/spotlight/emsac/emsac-recommendations-rules-605-606.pdf.*

[100] *See, e.g.,* Letter from Christopher Nagy, CEO, and Dave Lauer, President, KOR Group LLC (Apr. 4, 2014) (''KOR Group I''); Letter from Citigroup Global Markets Inc. and its affiliates re Concept Release on Equity Market Structure (Release No. 34–61358; File No. S7–02–10) (Aug. 7, 2014) (''Citigroup Letter''); Letter from Consumer Federation of America re File Number S7–02–10, Comments on Concept Release on Equity Market Structure (Sept. 9, 2014) (''Consumer Federation I''); Letter from BlackRock, Inc. re Equity Market Structure Recommendations; Concept Release on Equity Market Structure, File No. S7–02–10; Regulation Systems Compliance and Integrity, File No. S7–01–13; and Equity Market Structure Review (Sept. 12, 2014) (''BlackRock Letter''); Letter from Financial Information Forum re Rule 605/606 Enhancements from a Retail Perspective (Oct. 22, 2014) (''FIF I''); Letter from Securities Industry and Financial Markets Association re Recommendations for Equity Market Structure Reforms (Oct. 24, 2014) (''SIFMA Letter''); Healthy Markets Proposal re SEC Rule 605/606 Reform (referenced in Aug. 2, 2016 statement of Christopher Nagy before the EMSAC) (''Healthy Markets II'') at 2; Letter from Healthy Markets re Notice of Meeting of Equity Market Structure Advisory Committee Meeting (File No. 265–29); List of Rules to be Reviewed Pursuant to the Regulatory Flexibility Act (File No. S7–21–16); Concept Release on Equity Market Structure (File No. S7–02–10) (Apr. 3, 2017) (''Healthy Markets III''); Letter from Healthy Markets re Potential Reforms Regarding the Provision of Market Data, Concept Release on Equity Market Structure (Rel. No. 34–61358; File No. S7–02–10), and Market Data and Market Access Roundtable (Rel. No. 4–729) (Jan. 3, 2020) (''Healthy Markets IV''). Comments on the Commission's 2010 Concept Release on Equity Market Structure are available at *https://www.sec.gov/comments/s7-02-10/s70210.shtml.* As with various other comments referenced herein, including, without limitation, comments received in connection with the Concept Release, the comments were not provided with reference to the proposals discussed in this release.

[101] *See, e.g.,* Letter from James J. Angel, Ph.D., CFA, Georgetown University re Disclosure of Order Handling Information, File S7–14–16 (Aug. 26, 2016) (''Angel Letter''); Letter from Consumer Federation of America re File Number S7–14–16, Disclosure of Order Handling Information (Sept. 26, 2016) (''Consumer Federation II''); Letter from Fidelity Investments re Disclosure of Order Handling Information; File No. S7–14–16 (Sept. 26, 2016) (''Fidelity Letter''); Letter from Financial Information Forum re Release No. 34–78309; File

that the Commission amend Rule 605 to modernize the Rule and increase the usefulness of available execution quality disclosures. In addition, one broker-dealer petitioned the Commission to make ''modest rule amendments'' to Rule 605 and further stated that ''[i]mproving these metrics is essential for a market participant to quantitatively and qualitatively assess whether any particular broker-dealer obtained the most favorable terms under the circumstances for customer orders.'' [102]

The EMSAC and commenters generally support expanding the Rule's scope beyond market centers.[103] In particular, in November 2016, the EMSAC recommended that the Commission ''[e]xpand the scope of Rule 605 by requiring every broker-dealer to report with an exemption for broker[-]dealers with de minimis order flow, aligning the scope of Rule 605 reporting with Rule 606.'' [104] The EMSAC's recommendation acknowledged that there would be compliance and implementation costs associated with this expansion, but stated that the use of third-party vendors may mitigate some of these concerns.[105] Further, the EMSAC's recommendation stated that having all broker-dealers provide Rule 605 data would create an opportunity for market participants, academics, and the press to evaluate these statistics in a consistent manner.[106]

When the EMSAC met to consider this recommendation, panelists provided some explanation of the gaps in current execution quality disclosures. One panelist stated that the current reporting regime ''miss[es] important information about the overall execution quality of a covered order'' because Rule 605 reports only pertain to order routing handled by market centers.[107] This panelist explained that orders are handled by smart order routers that may not be located within a market center, and the Rule 605 data does not capture price slippage or delays that may occur as these orders are received by multiple non-executing market centers or broker-dealers.[108] Another panelist described the difficulties that he encountered when trying to compare the execution quality of brokers using data available under the existing rules.[109] According to the panelist, he ''had to make very rough inferences about the brokers' executions because of the gaps in the disclosure requirements.'' [110] Moreover, this panelist stated that one fundamental problem with making these inferences was that a market maker's average execution quality across all of its orders received from brokers may be better or worse than its execution quality with respect to a particular broker's order flow.[111]

One EMSAC committee member acknowledged that retail brokerage firms did not favor the recommendation to expand Rule 605 reporting to broker-dealers, and stated that these firms would argue that aggregate statistics are more important for retail investors, who they claim are not going to look at the Rule 605 reports.[112] This committee member stated that the counter-argument to this position is that if everyone is preparing Rule 605 reports, it would be possible to do various types of aggregation using that data.[113] When the EMSAC met later to approve the recommendation, one committee member stated that the goal is to make data publicly available so that ''experts can help people make better decisions'' and that different groups would turn the data into usable reports, so it is not necessary to scale back the disclosures for the consumer.[114]

When the Commission solicited comment on the 2018 Rule 606 Amendments, several commenters recommended that the Commission expand the required reporting of execution quality statistics to better cover retail investors.[115] One commenter stated that the type of standardized execution statistics that several firms voluntarily publish on a quarterly basis measure the quality of trade executions on retail investor orders in exchange-listed stocks and help investors evaluate their particular retail brokerage firm.[116] Another commenter stated that there is a ''fundamental flaw'' in the logic of Rule 605 and Rule 606 because ''[t]he structure of the rules implicitly assumes

No. S7–14–16; Disclosure of Order Handling Information (Sept. 26, 2016) (''FIF II''); Letter from Financial Services Roundtable re Disclosure of Order Handling Information Proposal [File No. S7–14–16] (Sept. 26, 2016) (''Financial Services Roundtable Letter''); Letter from Healthy Markets Association re Disclosure of Order Handling Information (S7–14–16) (Sept. 26, 2016) (''Healthy Markets I''); Letter from IHS Markit re Disclosure of Order Handling Information; Proposed Rule, Release No. 34–78309; File No. S7–14–16 (Sept. 26, 2016) (''IHS Markit Letter''). Comments receiving in connection with the 2018 Rule 606 Amendments are available at *https://www.sec.gov/comments/s7-14-16/s71416.htm.*

[102] Letter from Virtu Financial re Petition for Rulemaking to Amend SEC Rule 605 (Sept. 20, 2021) (''Virtu Petition'') at 2, *available at https://www.sec.gov/rules/petitions/2021/petn4-775.pdf.*

[103] *See* EMSAC III at 2; IHS Markit Letter at 2; Healthy Markets II at 2.

[104] EMSAC III at 2 (adopting recommendations of the Customer Issues Subcommittee).

[105] *See id.*

[106] *See id.*

[107] *See* EMSAC I at 0103:23–0104:7 (Frank Hatheway, NASDAQ).

[108] *See id.* at 0104:7–12 (Frank Hatheway, NASDAQ).

[109] *See id.* at 0094:6–0100:12 (Bill Alpert, Barron's).

[110] *Id.* at 0096:12–15 (Bill Alpert, Barron's). *See also id.* at 0097:3–8 (Bill Alpert, Barron's) (stating that ''the only effective, objective way to use the available disclosures was to score each broker with a weighted sum of their order flow fractions from the routing reports and then weight those with the effective over quoted measures of the market makers that they were sending their orders to''); 0096:25–0097:3 (stating that some brokers voluntarily disclose execution quality information, but they use different information and so the information is not comparable).

[111] *See* EMSAC I at 0097:14–22 (Bill Alpert, Barron's). *See also id.* at 0096:18–22 (Bill Alpert, Barron's) (stating that ''almost every broker'' claimed that the execution quality that it received at a particular market maker was above average). This panelist also argued, based on the introduction of voluntary disclosures regarding price improvement for odd-lot orders by a few brokers and market makers, that disclosure improves behavior. *See id.* at 0098:6–0099:9 (Bill Alpert, Barron's) (stating the price improvement on odd-lot orders improved within a year after voluntary disclosures started). *See also id.* at 0132:6–11 (Brad Katsuyama, IEX) (stating that improving disclosures leads to improved performance).

[112] *See id.* at 0136:24–0137:7 (Manisha Kimmel, Thomson Reuters). *But see id.* at 0102:22–0103:2) (Frank Hatheway, NASDAQ) (''While individual retail investors generally don't review 605 statistics themselves, . . . the existence of the reports appears to provide precisely the form of discipline that the Commission envisioned when it adopted Rule 605 and 606.'').

[113] *See* EMSAC I at 0137:7–10 (Manisha Kimmel, Thomson Reuters). *See also* Statement of Christopher Nagy, Healthy Markets Association, at 6 (suggesting that the Commission mandate reporting of some execution quality statistics for retail orders); Healthy Markets I at 5–6 (recommending that the Commission modify Rule 606 to include select execution quality statistics from Rule 605 for each identified routing destination).

[114] EMSAC II at 0065:1–16 (Brad Katsuyama, IEX). *But see id.* at 0064:18–24 (Jamil Nazarali, Citadel) (stating that his firm's retail broker clients expressed concerns with the recommendation that Rule 606 include the execution quality of the market makers that they route to, because there is a lot of important criteria that goes into routing and the reports could be misleading).

[115] *See* Angel Letter at 3 (recommending that brokers should be required to provide execution quality statistics by providing information on individual trade confirmations and displaying summary statistics on their websites); Fidelity Letter at 7–8 (recommending that the Commission require brokers to make publicly available certain execution quality statistics); Healthy Markets I at 7, 11 (recommending that execution quality metrics should be provided to retail customers); IHS Markit Letter at 2 (recommending that all brokers that receive client orders and subsequently route orders on behalf of the client should provide information on the execution quality received at each venue). *See also* Consumer Federation II at 10; Financial Services Roundtable Letter at 4–5.

[116] *See* Fidelity Letter at 7–8. For additional discussion about this voluntary effort to provide aggregated execution quality statistics, *see infra* notes 450–451 and accompanying text. *See also* Consumer Federation II at 10 (stating that voluntary disclosures by several market participants show that such disclosures are possible, and undercut arguments that doing so is too costly or burdensome).

that execution quality is solely a function of the market center and that the brokerage firm has no impact on execution quality.'' [117] According to this commenter, execution quality is a product of both the broker's skill and the quality of the market center's execution, and therefore requiring brokers to show where they route orders does not provide retail investors with useful information about the actual execution quality that their orders receive.[118] Another commenter stated that even though most retail investors may not use the disclosures directly, disclosures provide indirect benefits by promoting competition and by facilitating use by third-party analysts and academic researchers that provide an in-depth review of the disclosures.[119]

One market participant, in a letter recommending that the Commission require broker-dealers to publish monthly cost of execution statistics, stated that Rule 605 and Rule 606 statistics published by market centers and broker-dealers do not provide a means for customers to judge how their brokers have performed with respect to keeping commissions low without adversely affecting execution quality.[120] This commenter further remarked that matching a broker's routing statistics up with a receiving market center's execution quality statistics is ''essentially impossible.'' [121]

Commenters have also suggested various ways to expand or modify the definition of covered order, including broadening its scope to capture additional order types.[122] In particular, the petitioner for rulemaking recommended including short sales, stop orders, and pre-market orders in Rule 605 reports.[123] The petitioner stated that these order types are ''critical to a complete assessment of execution quality,'' and stated that many retail brokers include these orders when measuring the execution quality provided by market centers.[124] A commenter to the 2018 Rule 606 Amendments also recommended including orders submitted prior to the market open in Rule 605 reports and stated that the marketable or non-marketable characteristics of such orders cannot be determined under the current framework.[125]

The EMSAC and commenters have also suggested bringing smaller and larger order sizes within scope.[126] The petitioner stated that bucketing orders solely by numbers of shares is skewing comparisons.[127] Another commenter, responding to the Commission's Concept Release on Equity Market Structure, recommended the following order size buckets: one share to 99 shares; 100 shares up to 9,999 shares, divided into 100 share increments; 10,000 shares to 24,999 shares; greater than 25,000 shares.[128] One commenter that offered recommendations to modify Rule 605 suggested including a $500,000 notional cap on all share size buckets.[129] Another market participant expressed support for that cap or a different one.[130] The market participant suggested that a cap of $200,000, consistent with the definition of ''block size'' in 17 CFR 242.600(b)(12)(ii), would make sense, but noted that benchmark has not changed with inflation.[131] The market participant also stated that the use of notional buckets in the ''categorized by order size'' definition would account for fractional share and odd-lot orders.[132]

Commenters have also raised concerns about the current provisions in the Rule for timestamps, especially given the speed of today's marketplace.[133] Others have also suggested modifications to improve the accessibility and standardizations of reports, including centralizing report creation and requiring summary statistics.[134] In several contexts in which the Commission has received general feedback on equity market structure, commenters have suggested that the Commission require a simplified execution quality report, particularly for retail investors.[135] One commenter on the Concept Release on Equity Market Structure stated that if the Commission's goal was for execution quality statistics to make the markets more transparent for retail investors, the commenter did not believe that was occurring, and the average retail investor might benefit more from a simplified version of the report.[136] One EMSAC committee member stated that some retail firms have argued that aggregate statistics are more important for the retail investor, and that retail investors are not going to look at Rule 605 reports.[137] This EMSAC committee member further stated that an issue with aggregation is what to include in the aggregate statistics, and depending on a firm's business model, the firm may want to

[117] Angel Letter at 3.

[118] *See id.* However, this commenter also stated that the Rule 605 data on execution quality is too raw for most investors to interpret. *See id.* at 2. *See also* Consumer Federation II at 10 (stating that the only way to assess whether customers are being best served by their broker-dealer's routing decisions is by requiring execution quality statistics); Financial Services Roundtable Letter at 4–5 (stating that currently Rule 605 reports require investors to draw an inference that they will achieve the same performance as the average order sent to that venue, and additional data would help an investor compare the execution quality that various broker-dealers obtain at a particular execution venue).

[119] *See* Consumer Federation II at 10. *See also* IHS Markit Letter at 29–30 (stating that large retail routing brokers use private, internal versions of Rule 605 reports to calculate execution quality metrics for different market centers, leading to significant improvement in execution quality statistics for covered orders, and that voluntary reporting of execution quality metrics has also improved execution quality).

[120] *See* Letter from Thomas Peterffy, Chairman, Interactive Brokers Group (Aug. 1, 2014), at 3 (''Interactive Brokers Letter''), *available at https://www.interactivebrokers.com/download/execution_stats_comment_letter.pdf* (''Payment for order flow has often been justified by its advocates based on the claim that the receipt of such payments allows brokers to keep commissions low and does not affect execution quality (or if it does, such costs are passed back to customers in the form of lower commissions). . . . [T]he current Rule 605 and 606 statistics published by market centers and brokers . . . do not provide a basis for regulators to judge these claims, or for customers to judge their broker's performance.'').

[121] Interactive Brokers Letter at 3.

[122] *See* Letter from Financial Information Forum re Request for Comment—FIF Rule 605 Modernization Recommendations (Jan. 30, 2019) (''FIF III''), *available at https://www.sec.gov/comments/s7-02-10/s70210-5002077-182848.pdf;* EMSAC III; IHS Markit Letter; Healthy Markets II; FIF Letter I; KOR Group I.

[123] *See* Virtu Petition at 5.

[124] *Id.*

[125] *See* FIF II at 11–12.

[126] *See* EMSAC III at 2; FIF III at 4; Healthy Markets II at 3; IHS Markit Letter at 9–10, 34.

[127] *See* Virtu Petition at 5.

[128] *See* Healthy Markets II at 4.

[129] *See* FIF III at 4.

[130] *See* ''Would 605 Work Better in Dollars?'', Phil Mackintosh, Chief Economist and Senior Vice President, Nasdaq (Sept. 16, 2021), *available at: https://www.nasdaq.com/articles/would-605-work-better-in-dollars-2021-09-16.*

[131] *See id.* The market participant stated that ''a lower [than $500,000] notional cap makes sense too, given the small sizes of retail orders, especially when we consider the limits of the typical depth of book to fill covered orders.'' *Id.*

[132] *See id.*

[133] *See* KOR Group I at 2, FIF I at 2.

[134] *See* EMSAC I at 0099:25–0100:3, 0106:14–25; EMSAC III at 2; Healthy Markets II at 3; BlackRock Letter at 3; Citi Letter at 8; Consumer Federation II at 6.

[135] *See, e.g.,* Citigroup Letter at 8 (suggesting in connection with the Concept Release on Equity Market Structure that a simplified execution quality report geared towards retail investors should contain a simple chart or graph showing how often a customer's trades are executed at the NBBO or better, how fast the trade is done, and whether the customer received enhanced liquidity); SIFMA Letter at 12 (stating in providing recommendations for equity market structure reforms that regulators should direct broker-dealers to provide public reports of order routing and execution quality metrics that are geared towards retail investors, and these reports should include relevant information in a uniform format that is easy to understand).

[136] *See* Citigroup Letter at 8.

[137] *See* EMSAC I at 0137:4–7 (Manisha Kimmel, Thomson Reuters). *See also id.* at 0137:7–10 (''The counter argument to that is, if everybody is doing the 605 [reports], then you could have all sorts of aggregation based on that . . .'').

put in different things.[138] Separately, the EMSAC, as well as a commenter to the 2018 Rule 606 Amendments, recommended that the Commission incorporate Rule 605 and 606 data into the Commission's data visualization tool.[139]

III. Proposed Modifications to Reporting Entities

A. Larger Broker-Dealers

Rule 605 of Regulation NMS requires market centers, such as national securities exchanges, OTC market makers, and ATSs, to produce publicly available, monthly execution quality reports. However, broker-dealers are not included within the scope of Rule 605's reporting requirements unless they are market centers. Although Rule 606 requires broker-dealers to identify the venues, including market centers, to which they route customer orders for execution, customers of those broker-dealers do not have access to comprehensive information about execution quality. For example, to the extent that a market center's execution quality differs for orders received from one broker-dealer versus another broker-dealer, that difference would not be apparent from currently available execution quality statistics.

The Commission is proposing to expand the scope of entities that must prepare Rule 605 reports to include larger broker-dealers, which have a customer-facing line of business. As proposed, Rule 605 would include broker-dealers as reporting entities, in addition to market centers, but exclude from that expanded requirement broker-dealers that do not introduce or carry at least 100,000 customer[140] accounts. This expansion of the scope of Rule 605 would improve the usefulness of execution quality statistics, promote fair competition, and enhance transparency by providing investors with information that they could use to compare the execution quality provided by customer-facing broker-dealers. Further, limiting these reporting obligations to broker-dealers that have a larger number of customers would focus the associated implementation costs on those broker-dealers for which the availability of more specific execution quality statistics would provide a greater benefit.

Rule 605 and Rule 606 operate together to allow investors to evaluate what happens to their orders after investors submit their orders to a broker-dealer for execution.[141] In the current regulatory environment, customers that submit held orders (in many cases, individual investors) have a limited ability to assess the execution quality that their broker-dealers are providing. A customer of a broker-dealer can use a broker-dealer's Rule 606 reports to identify certain regularly-used venues to which the broker-dealer routes orders for execution. However, with respect to held orders, these Rule 606 reports are not required to include any detailed execution quality information.[142] Moreover, Rule 605 reports prepared by market centers commingle orders from all broker-dealers that send covered order flow to the reporting market center. Yet a market center may provide different execution quality to customers of different broker-dealers, and in some cases this difference may be substantial.[143] Therefore, a customer of that broker-dealer must make an inference about the execution quality achieved by that particular broker-dealer at a market center based on a Rule 605 report that covers all orders received by the market center, even though that inference may not be accurate.[144]

Due to this gap in the reporting requirements, variations in execution quality provided by a market center to a particular broker-dealer submitting the order are not observable by market participants and other interested parties using publicly available execution quality reports.[145] When requiring each market center to report on all orders that it received for execution, the Commission intended to assign the disclosure obligation to the entity that would control whether and when the order would be executed.[146] The Commission required market centers to include in their Rule 605 reports those orders that they routed to another venue for execution, thereby recognizing that market centers' decisions about whether and how to route orders can affect execution quality.[147] Likewise, broker-dealers that route customer orders make decisions that affect the execution quality that their customers' orders receive.

In addition, while the Commission adopted Rule 605 in 2000 as a ''minimum step necessary to address fragmentation,''[148] the equities markets have grown even more fragmented since that time.[149] Broker-dealers have many choices about where to route customer orders for execution. But broker-dealers may face conflicts of interest when discussing arrangements regarding the outsourcing of customer order flow, including those that involve PFOF, and making routing decisions.[150] With respect to orders submitted on a held basis, broker-dealers must include information about their payment relationships with execution venues in quarterly reports prepared pursuant to Rule 606(a)(1).[151] Without information

[138] *See id.* at 0137:11–16 (Manisha Kimmel, Thomson Reuters).

[139] *See* EMSAC III at 2; FIF II at 13. *See also* EMSAC I at 0139:20–0140:11 (Gary Stone) (stating that individual investors need the Commission to provide the data, because they cannot rely on vendors that will charge for that service); EMSAC I at 0105:20–0106:7 (Frank Hatheway, NASDAQ) (stating that before replacing these existing offerings by data vendors of data visualization tools for Rule 605 and 606 data, the Commission may want to consider alternatives for making the data widely available and accessible); EMSAC I at 0140:12–15 (Bill Alpert, Barron's) (stating that it would be salutary to have competition between vendors, the Commission, and the press to develop easier to use tools and better presentations).

[140] ''Customer'' means any person that is not a broker or dealer. *See* 17 CFR 242.600(b)(23).

[141] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75414.

[142] *See supra* notes 50–55 and accompanying text.

[143] *See supra* notes 108–110 and accompanying text (discussing an EMSAC panelist's observations after trying to infer execution quality based on available data that one ''fundamental problem'' with making these inferences was that a market maker's execution quality may vary according to each broker's order flow). *See also supra* note 87 and accompanying text.

[144] *See supra* notes 107–111, 115–118, and 120–121 and accompanying text.

[145] The Commission preliminarily believes that many institutional customers regularly conduct, directly or through a third-party vendor, transaction cost analysis of their orders to assess execution quality against various benchmarks, but this information is not publicly available. The Commission believes that some institutional investors may currently use aggregated statistics or summaries of Rule 605 reports prepared by third parties, who make these reports available for a fee. *See infra* section VII.C.1.(c)(2).

[146] *See supra* note 33 and accompanying text (citing Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75421).

[147] When adopting Rule 605, the Commission stated that from the perspective of the customer who submitted the order, the fact that a market center chooses to route the order away ''does not reduce the customer's interest in a fast execution that reflects the consolidated BBO'' that is ''as close to the time of order submission as possible,'' and that, consequently, in evaluating the quality of order routing and execution, it is important for customers to know how the market center handles ''all orders that it receives, not just those it chooses to execute.'' Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75423.

[148] *See supra* note 9 and accompanying text.

[149] *See supra* notes 74–84 and accompanying text.

[150] *See supra* notes 88–89 and accompanying text.

[151] *See supra* notes 50–52 and accompanying text. As discussed above (*supra* section II.D), Rule 606 requires broker-dealers to identify and report data according to execution venue, rather than by market center. Not all execution venues reflected on Rule 606 reports will necessarily fall within Regulation NMS's definition of ''market center.'' *See, e.g.,* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58365 (stating that the Commission's reference to ''venues'' for purposes of Rule 606(b)(3) is meant to refer to external liquidity providers to which the broker-dealer may send actionable indications of interest (''IOIs''), and that this category of market participants likely would

Continued

about the execution quality that broker-dealers in the business of routing customer orders obtain for those orders, market participants and other interested parties lack key information that would facilitate their ability to evaluate how these payment relationships may affect execution quality. Recognizing these and other concerns, the EMSAC and other commenters in multiple contexts have suggested that the Commission expand the scope of Rule 605 to require reporting by broker-dealers.[152]

Consequently, the Commission is now proposing to require larger broker-dealers to prepare and publish execution quality reports pursuant to Rule 605, through the proposed revisions to Rule 605 and the addition of proposed Rule 605(a)(7). This expansion of the scope of reporting entities would increase transparency into the differences in execution quality achieved by broker-dealers when they route customer orders to execution venues, and thereby would make the execution quality statistics more useful to market participants and other interested parties.[153] This change would increase competition among broker-dealers that accept customer orders for execution by providing information that market participants can use to evaluate and compare broker-dealers' execution quality. This could lead to faster executions, better price improvement, and a shift in order flow to those broker-dealers offering the best execution quality for their customers. This would further the national market system objectives set forth in section 11A(a)(1) of the Exchange Act, including the efficient execution of securities transactions, fair competition among market participants, the public availability of information on securities transactions, and the best execution of investor orders.[154]

Specifically, the Commission is proposing to amend Rule 605 to apply the reporting requirements contained therein to brokers and dealers, in addition to market centers. Where current Rule 605 refers to ''market centers,'' the Commission is proposing to insert references to ''brokers'' and ''dealers.'' [155] The proposed expansion of Rule 605's reporting requirements to cover broker-dealers would also affect Rule 600 of Regulation NMS. Specifically, the definition of ''covered order'' in Rule 600(b)(22) refers to ''any market order or any limit order (including immediate-or-cancel orders) received by a market center.'' [156] The Commission is proposing to amend this provision to refer to orders ''received by a market center, broker, or dealer.'' [157] Further, as noted above, the Plan establishes procedures for market centers to follow in making available to the public the monthly reports required by the Rule.[158] Because of the proposed amendments to the Rule, the existing Plan would no longer comply with proposed Rule 605(a)(3) and thus would need to be updated in order to incorporate references to broker-dealers subject to the Rule.[159] As is currently the case for market centers that are not Participants, the Participants would be required to enforce compliance with the terms of the Plan by their members and person associated with their members.[160]

The Commission is mindful that Rule 605's execution quality reports contain a large volume of statistical data, and as a result it may be difficult for individual investors to review and digest the reports. The Commission considered the volume of execution quality statistics that would be produced when adopting Rule 605, and stated that the large volume of statistics reflects a deliberate decision by the Commission to avoid the dangers of overly general statistics that could hide significant differences in execution quality.[161] By requiring brokers-dealers to report stock-by-stock order execution information in a uniform manner, the proposal would make it possible for market participants and other interested parties to make their own determinations about how to group stocks or orders when comparing execution quality across broker-dealers.[162] Further, to the extent that certain market participants may not have the means to directly analyze the detailed statistics,[163] the Commission expects that independent analysts, consultants, broker-dealers, the financial press, and market centers will respond to the needs of investors by analyzing the disclosures and producing more digestible information using the data, as the Commission anticipated when approving the predecessor to Rule 605 and has observed since that time.[164] As discussed further below, the Commission also is proposing to require all market centers and broker-dealers that would be subject to Rule 605's reporting requirements to produce summary reports with aggregated execution quality information.[165] Requiring broker-dealers to produce more detailed execution quality data would help ameliorate potential concerns about overly general statistics, or about the specific categorization of orders and selection of metrics in the summary reports, by allowing market participants and other interested parties to conduct their own analysis based on

include market centers as defined in Rule 600(b)(38), but may not be limited to such market centers).

[152] *See generally supra* section II.E.

[153] Among the commenters that raised concerns about the lack of available information regarding the execution broker-dealers provide to their customers' orders, one commenter stated that there is a ''fundamental flaw'' in the logic of Rule 605 and Rule 606 because these rules assume that execution quality is solely the function of the market center, but instead execution quality is a product of a combination of the broker's skill and the quality of the market center's execution. *See supra* notes 117–118 and accompanying text. The proposal would address this concern by requiring larger broker-dealers to produce execution quality reports, rather than leaving market participants and other interested parties to rely solely on the execution quality reports produced by the market centers to which a particular broker-dealer routes orders.

[154] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75414 n.1, 75417 (citing 15 U.S.C. 78k–1).

[155] *See* proposed Rules 605 (introductory paragraph), 605(a) (caption), 605(a)(1), 605(a)(1)(i)(D), 605(a)(3), 605(a)(4), 605(a)(5), and 605(a)(6).

[156] 17 CFR 242.600(b)(22). The Commission is proposing to renumber the definition of ''covered order'' as proposed Rule 600(b)(30).

[157] *See* proposed Rule 600(b)(30).

[158] *See supra* section II.B.3.

[159] The Plan details procedures for market centers to follow and, among other things, specifies the order and format of fields in a manner that aligns with current Rule 605(a)(1). *See* Plan generally and section VI(a) of the Plan. Under current Rule 605(a)(2), every national securities exchange trading NMS stocks and each national securities association is required to act jointly in establishing procedures for market centers to follow in making the reports required by Rule 605(a)(1) available to the public in a uniform, readily accessible, and usable electronic form. *See* 17 CFR 242.605(a)(2). The proposal would add brokers and dealers to the scope of entities to be covered by the Plan's procedures and renumber Rule 605(a)(2) as Rule 605(a)(3). *See* proposed Rule 605(a)(3). The Plan would also need to be updated to accommodate any new data elements in the order and format of fields.

[160] *See* 17 CFR 242.608(c). *See also supra* note 47 (describing Participants and Designated Participants under the Plan).

[161] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75419. *See also id.* (stating that after this basic information is disclosed by all market centers in a uniform manner, market participants and other interested parties will be able to determine the most appropriate classes of stocks and orders to use in comparing execution quality across market centers).

[162] *See, e.g., supra* note 113 and accompanying text.

[163] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75419, text accompanying n.27 (stating that most individual investors likely would not obtain and digest the reports themselves). *See also supra* note 112 and accompanying text (EMSAC committee member stating that retail investors will not look at the Rule 605 reports); note 118 (commenter stating that Rule 605 data is too raw for most investors to interpret); note 119 and accompanying text (commenter stating that most retail investors may not use the disclosures directly).

[164] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75419. *See also supra* notes 106, 114, 116 and accompanying text; *infra* notes 544–546 and accompanying text.

[165] *See infra* section V.

alternative categorizations of the underlying data.

Proposed Rule 605(a)(7) states that a broker or dealer that is not a market center shall not be subject to the requirements of Rule 605 unless that broker or dealer introduces or carries 100,000 or more customer accounts through which transactions are effected for the purchase or sale of NMS stocks (the ''customer account threshold'').[166] The Commission is mindful of the additional costs that broad expansion of the rule to broker-dealers would entail. The relative benefit of having a broker-dealer prepare Rule 605 reports increases when the broker-dealer has more customers. The Commission is proposing a minimum reporting threshold of 100,000 customers to balance the benefits of having broker-dealers produce execution quality statistics with the costs of implementation and continued reporting.[167]

Analysis indicates that approximately 85 broker-dealers (or approximately 6.7% of customer-carrying broker-dealers) introduce or carry more than 100,000 customer accounts and these broker-dealers together handle over 98% of customer accounts.[168] Utilizing a 100,000 customer account threshold would allow the Rule 605 reporting requirements to capture those broker-dealers that introduce or carry the vast majority of customer accounts, while subjecting only a relatively small percentage of broker-dealers that accept customer orders for execution to the reporting obligation and excluding those broker-dealers that introduce or carry a smaller number of customer accounts. Although utilizing a lower customer account threshold, such as 10,000 customer accounts, would result in capturing substantially more transactions, the lower customer account threshold would result in capturing only marginally more customer accounts. This implies that the additional customer coverage would result from a small number of accounts that trade in large volumes. Therefore, the additional coverage may not be as beneficial because many of the additional customer accounts that would be included with a lower threshold likely belong to institutional traders that have access to alternative execution quality information and also are likely to use not held orders, which are not included in Rule 605 reports.[169]

The Commission considered using the volume of broker-dealers' customer transactions, rather than the number of their customer accounts, for purposes of establishing a reporting threshold. Although establishing a reporting threshold using the number of customer transactions would likely capture a larger number of customer orders than the proposed customer account threshold, this approach would likely exclude broker-dealers that have a larger number of relatively inactive customer accounts and include broker-dealers that have a small number of customer accounts associated with large amounts of trading volume. In each respect, the reporting threshold would be less likely to capture individual investor orders and more likely to capture institutional investor orders, and therefore the threshold would be less likely to target the types of orders that may be most useful for consumers of Rule 605 reports. In addition, utilizing a threshold based on the number of customer transactions may result in a less stable set of broker-dealers that are subject to Rule 605's reporting requirements, because transaction volume is more likely than customer account numbers to vary significantly from month to month based on market conditions. Further, the number of their customer accounts is likely less costly for broker-dealers to calculate and track as compared to the volume of transactions associated with their customer accounts.[170]

The Commission also considered EMSAC's recommendation to expand the scope of Rule 605 to cover all broker-dealers, which contemplated excluding only broker-dealers with de minimis order flow.[171] The Commission is preliminarily concerned that subjecting a significantly larger number of broker-dealers to Rule 605's reporting requirements would substantially increase the costs of the proposal and that the increase in cost that would accompany the use of a de minimis threshold would not be justified by the corresponding benefit.[172] This concern about requiring smaller broker-dealers to prepare Rule 605 reports is present with any *de minimis* threshold, whether based on order flow as the EMSAC suggested or on some other measure such as number of customer accounts.

The proposed customer account threshold would require brokers-dealers to include in their calculations the public customer accounts that they introduce, as well as the customer accounts that they carry.[173] Rule 605 reports that reflect orders received from customer accounts that a broker-dealer introduces or carries would provide useful information to market participants because both introducing and carrying broker-dealers make decisions about where to route those orders and it would be helpful for customers to be able to evaluate the execution quality received as a result of those decisions.[174] An introducing broker-dealer may choose to utilize an omnibus clearing arrangement and not disclose certain information about its underlying customer accounts to the clearing firm.[175] In such circumstances,

[166] In addition, as discussed further below, proposed Rule 605(a)(7) states that any broker or dealer that meets or exceeds this customer account threshold and is also a market center shall produce separate reports pertaining to each function.

[167] *See infra* section VII.D.2 for a discussion of the costs of the proposed amendments to Rule 605. As discussed further below, broker-dealers that were previously not required to publish Rule 605 reports would incur initial costs to develop the policies and procedures to post Rule 605 reports for the first time, and all broker-dealers would face ongoing costs to continue to prepare them each month. Other potential costs include a potential for less transparency or lower execution quality, and the costs to update best execution methodology. *See also infra* section VII.E.1.(a) for a discussion about the potential costs of imposing Rule 605's reporting requirements on broker-dealers with a smaller number of customer accounts.

[168] *See infra* Table 13 for cost-benefit analysis of different customer account thresholds defining ''larger broker-dealer'' and *infra* note 1008 and accompanying text for methodology. For example, approximately 45 broker-dealers introduce or carry more than 500,000 customer accounts and these broker-dealers together handle over 96% of customer accounts. Further, approximately 235 broker-dealers introduce or carry more than 10,000 customer accounts and these broker-dealers together handle over 99% of customer accounts. *See infra* Table 13.

[169] *See infra* note 1011 and accompanying text; Table 13. *See also infra* section VII.E.1.(a) for further discussion of alternative customer account thresholds.

[170] *See infra* section VII.E.1.(c) for further discussion about using a threshold based on the number of customer transactions.

[171] *See supra* notes 104–106 and accompanying text.

[172] *See infra* note 1011 and accompanying text and Table 13 (showing that, for example, adjusting the customer account threshold from 100,000 customer accounts to 10,000 customer accounts would increase the estimated costs from approximately $5 million to approximately $13.9 million).

[173] *See* proposed Rule 605(a)(7).

[174] An introducing broker-dealer is a broker-dealer that has a contractual arrangement with another firm, known as the carrying or clearing firm, under which the clearing/carrying firm agrees to perform certain services for the introducing firm. Usually, the introducing firm transmits its customer accounts and customer orders to the clearing/carrying firm, which executes the orders and carries the account. *See* Securities Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973, 56978 (Dec. 2, 1992) (Net Capital Rule).

[175] Some broker-dealers utilize an ''omnibus clearing arrangement,'' where the clearing firm maintains one account for all of customer transactions of the introducing firm, rather than a ''fully disclosed introducing relationship.'' In an omnibus arrangement, the clearing firm does not know the identity of the customers of the introducing firm, whereas in a fully-disclosed arrangement, the clearing/carrying firm knows the names, addresses, securities positions, and other

Continued

because the clearing broker may not have access to information about how many customer accounts a particular omnibus account represents, the proposal specifies that when an omnibus clearing arrangement is used the underlying customer accounts would be required to be counted as accounts carried by the introducing broker-dealer rather than by the clearing broker. Therefore, for purposes of Rule 605, a broker or dealer that utilizes an omnibus clearing arrangement for any of its underlying customer accounts would be considered to carry such underlying customer accounts when calculating the number of customer accounts that it introduces or carries.[176]

Requiring both introducing broker-dealers and carrying broker-dealers to prepare Rule 605 reports might result, in some instances, in the same underlying order being reflected on multiple broker-dealers' Rule 605 reports. However, Rule 605 does not require reports that reflect execution quality on an order-by-order basis and the separate reports would provide different views of execution quality specific to the group of orders handled by each broker-dealer. Moreover, the current structure of Rule 605 already contemplates that certain orders may be reflected on more than one report, in the case of orders that are received by one market center and then routed to another market center for execution.[177]

Proposed Rule 605(a)(7) states that any broker or dealer that meets or exceeds the customer account threshold and is also a market center shall produce separate reports pertaining to each function. Therefore, a broker-dealer that meets or exceeds the customer account threshold and is also a market center would be required to produce one report that includes all of the covered orders in NMS stocks that it received for execution when acting as a market center and a separate report that includes all of the covered orders in NMS stocks that it received for execution when acting as a broker-dealer. Requiring a firm to produce separate reports pertaining to its market center function and its broker-dealer function would allow market participants and other interested parties to view the firm's execution quality from the perspective of how it operates in each of these separate roles.

This aspect of the proposal would not change how a firm should determine when it is acting as a market center, as that term is defined in Rule 600(b)(46).[178] In particular, some firms that are larger broker-dealers also act as OTC market makers, which are a type of market center. Currently, to the extent that a dealer holds itself out as being willing to buy from and sell to its customers, or others, in the United States, an NMS stock for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than a block size, that dealer is defined as an OTC market maker.[179] For example, if a broker-dealer executes certain types of orders internally (*e.g.,* fractional share orders, small-sized orders, or orders in particular symbols), that broker-dealer may be acting as an OTC market maker, and thus a market center, for those specific types of orders. Moreover, Rule 605 requires that any report pertaining to a market center include all covered orders that it received for execution from any person, whether executed at the market center or at any other venue.[180] As is the case under Rule 605 currently for market centers that route orders away, under the proposal, the fact that a larger broker-dealer has routed certain covered orders away for execution would not alone be the basis on which to determine that it did not act as a market center with respect to those orders.[181]

For a larger broker-dealer that is also a market center, the report pertaining to its broker-dealer function would cover all orders that the broker-dealer received for execution as part of its customer-facing line of business, whether executed internally or routed away. An order would need to be reflected on both the report regarding the firm's market center function and the report regarding its broker-dealer function, if the broker-dealer received the order from a customer and also acts as a market center for that type of order. Each report would provide a different view of the firm's execution quality based on a different aspect of its business, and because reports reflect orders grouped by symbol, order type, and size, would reflect different execution quality metrics to the extent that the group of orders covered by the different reports did not overlap completely.[182]

As proposed, pursuant to Rule 605(a)(7), a broker-dealer would be excluded from Rule 605's reporting requirements only with respect to its customer-facing broker-dealer function (as opposed to its function as market center, if applicable) as long as the

relevant data as to each customer. *See id.* at 56978 n.16.

[176] *See* proposed Rule 605(a)(7). For example, an introducing broker-dealer that utilizes an omnibus clearing arrangement for 100,000 customer accounts and separately carries 50,000 customer accounts would be considered, for purposes of proposed Rule 605, to carry 150,000 customer accounts. In contrast, a broker-dealer who introduces, on a fully-disclosed basis, 125,000 customer accounts would be considered, for purposes of proposed Rule 605, to introduce 125,000 customer accounts. In both cases, the introducing broker-dealers would exceed the proposed customer account threshold.

[177] *See* 17 CFR 242.605(a)(1).

[178] *See* 17 CFR 242.600(b)(46). The Commission is proposing to renumber the definition of ''market center'' as proposed Rule 600(b)(56).

[179] *See supra* note 28. *See also* Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290, 48318–19 (Sept. 12, 1996) (Order Execution Obligations) (stating that dealers that internalize customer order flow in particular stocks by holding themselves out to customers as willing to buy and sell on an ongoing basis would fall within the definition of ''OTC market maker'' as defined in the predecessor to Rule 602 of Regulation NMS, even though they may not hold themselves out to all other market participants, and that dealers that hold themselves out to particular firms as willing to receive customer order flow, and execute those orders on a regular or continuous basis, also would fall within the definition of an OTC market maker); *id.* at 48319 (stating that broker-dealers will not be considered to be holding themselves out as regularly or continuously willing to buy or sell a security if they occasionally execute a trade as principal to accommodate a customer's request, and that, in response to the suggestion of some commenters, the Commission has modified the proposed amendment to the definition of ''OTC market maker'' to make clear that more than an isolated transaction is necessary before a dealer is designated an OTC market maker).

[180] *See* 17 CFR 242.605(a)(1). We note that the staff has provided their views on a way that a firm might determine the scope of covered orders for which it acts as a market center, *see* Division of Market Regulation: Staff Legal Bulletin No. 12R (Revised), Question 4 (June 22, 2001), *available at https://www.sec.gov/interps/legal/slbim12a.htm* (''The Rule applies to broker-dealers insofar as they act as a 'market center' with respect to orders received from other persons. Consequently, for orders in securities for which Firm X does *not* act as an OTC market maker, Firm X would not be acting as a market center in those securities and therefore need not report on orders in those securities that it receives as an agent and routes elsewhere for execution. Conversely, the orders that Firm X receives from any person in the 500 securities in which it acts as an OTC market maker (and therefore is a market center) generally must be included in Firm X's monthly reports, even if Firm X ultimately routes some of the orders to other market centers for execution.''). 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.

[181] *See supra* notes 143–144 and accompanying text.

[182] For certain firms regarding certain symbols, order types, or order sizes, the group of orders for which the firm acts as a larger broker-dealer may overlap completely with the group of orders for which the firm acts as a market center. However, broker-dealer firms are structured in myriad different ways, and the degree of overlap among reports might not remain stable over time; therefore, requiring firms to produce reports according to the orders for which they act as a market center and the orders for which they act as a broker-dealer would help keep the reports consistent with firms' lines of business.

number of customer accounts that it introduces or carries continues to be less than the customer account threshold. A broker-dealer would no longer be excluded from Rule 605 once and as long as it meets or exceeds the customer account threshold; however, a broker-dealer that meets or exceeds the customer account threshold for the first time would have a grace period before being required to comply with Rule 605's reporting requirements, as described further below.

Proposed Rule 605(a)(7) states that a broker or dealer that meets or exceeds the customer account threshold shall be required to produce reports pursuant to this section for at least three calendar months (''Reporting Period''). The Reporting Period would begin the first calendar day of the next calendar month after the broker or dealer met or exceeded the customer account threshold, unless it is the first time the broker-dealer has met or exceeded the customer account threshold.[183] Any time after a broker or dealer has been required to produce reports pursuant to this proposed section for at least a Reporting Period, if a broker or dealer falls below the customer account threshold, the broker or dealer would not be required to produce a report pursuant to this paragraph for the next calendar month.[184] The Reporting Period would start on the first day of the next calendar month after the customer account threshold has been crossed because this timing would align with Rule 605's monthly reporting period and avoid requiring broker-dealers to produce a report that covers a partial month, which would be less comparable with the monthly reports of other broker-dealers. Moreover, brokers-dealers that may at times fall below the customer account threshold would be required to produce reports pursuant to Rule 605 for at least three calendar months, because this minimum reporting period would help ensure a period of continuity in reporting. If instead a broker-dealer could fluctuate in and out of being required to comply with the reporting requirements from month-to-month, it would potentially be disruptive to the broker-dealer to have to coordinate compliance with the Rule on some months but not others and could interfere with customers' or market participants' ability to look at a broker-dealer's execution quality over time by analyzing historical data.[185]

The Commission is proposing that, the first time a broker or dealer has met or exceeded the customer account threshold, there would be a grace period of three calendar months before the Reporting Period begins and the broker or dealer must comply with the reporting requirements of Rule 605.[186] A limited three-month grace period is appropriate because it would provide a broker-dealer that crosses the customer account threshold for the first time with a period of time in which to come into compliance with Rule 605's reporting requirements. The three-month grace period would afford a broker-dealer adequate time to develop the systems and processes and organize the resources necessary to generate the reports pursuant to Rule 605, while still requiring the broker-dealer to begin reporting without an overly long delay. At the same time, should a broker-dealer subsequently fall below the customer reporting threshold, the Commission preliminarily believes that the broker-dealer should already have the necessary systems and processes in place and therefore a grace period would not be necessary if that broker-dealer again meets or exceeds the customer account threshold and becomes subject to Rule 605's requirements. The Commission notes that Rule 606 similarly provides for a three-month grace period for brokers or dealers subject to Rule 606(b)(3)'s reporting requirements for the first time only.[187]

Rule 605 requires that reporting entities calculate certain statistics based on the time of order receipt.[188] Moreover, Regulation NMS defines ''time of order receipt'' based on the time an order was received by a market center for execution.[189] In conjunction with the proposed expansion of Rule 605 to cover larger broker-dealers, it is necessary to modify this definition to specify how broker-dealers that are not acting as market centers would be required to calculate ''time of order receipt.'' The Commission has considered requiring broker-dealers to calculate the ''time of order receipt'' based on the time that the broker-dealer received the order or on the time that the broker-dealer transmitted the order to a market center for execution. Measuring ''time of order receipt'' based on when a broker-dealer received the order would provide a view of how that broker-dealer handled that order from the time the order was within its control, rather than limiting that view to what happened after the broker-dealer sent the order to a particular market center for execution. In this way, calculating execution quality statistics based on the time that a broker-dealer received the order could provide information about whether a broker-dealer's delay in sending the order to a market center for execution may have affected the execution quality obtained for that order, because the execution quality statistics would be measured based on the prevailing market prices at that time.[190] Accordingly, the Commission is proposing to modify the definition of ''time of order receipt'' to specify that, in the case of a broker or dealer that is not acting as a market

[183] *See* proposed Rule 605(a)(7).

[184] *See id.*

[185] When discussing the 2018 amendments to Rule 605(a)(2) that required market centers to keep Rule 605(a) reports posted on a public website for a period of three years, the Commission stated that it expected customers and the public to use the historical information to compare information from the same time period. *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58380 (also stating that, with respect to market centers voluntarily posting Rule 605(a) reports that were created prior to the amended rule's effectiveness, making historical data available to customers and the public could be useful to customers or market participants seeking to analyze such data).

[186] *See* proposed Rule 605(a)(7). After the three calendar month grace period, the Reporting Period would begin on the first calendar day of the fourth calendar month after the broker or dealer has met or exceeded the customer account threshold. *See id.* As described above, a broker-dealer that meets or exceeds the customer account threshold would be required to produce Rule 605 reports for at least a Reporting Period. *See supra* notes 183–184 and accompanying text. Therefore, a broker-dealer that crosses the customer account threshold for the first time would be required to comply with the reporting requirements of Rule 605 for at least a Reporting Period, even if that broker-dealer falls below the customer account threshold during the grace period.

[187] *See* 17 CFR 242.606(b)(4).

[188] *See, e.g.,* 17 CFR 242.605(a)(1)(ii)(D) (measuring, for shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution).

[189] *See* 17 CFR 242.600(b)(92). *See also* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75423 (''The definition [of 'time of order receipt'] is intended to identify the time that an order reaches the control of the market center that is expected, at least initially, to execute the order.''). The Commission is proposing to renumber the definition of ''time of order receipt'' as proposed Rule 600(b)(109).

[190] When adopting Rule 605, the Commission stated that a market center will use the time and consolidated BBO at the time it received the order, rather than the time and consolidated BBO when the venue to which an order was forwarded received the order, to calculate the required statistics. *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75423. The Commission stated that a market center should be held accountable for all orders that it receives for execution and should not be given an opportunity to exclude difficult orders by routing them to other venues, and that from the customer's perspective the fact that a market center chooses to route the order elsewhere does not reduce the customer's interest in a fast execution that reflects the consolidated BBO as close to the time of order submission as possible. *See id.* This same reasoning applies to orders that a broker-dealer receives and then routes to another venue for execution, and supports measuring the time of order receipt from the time that the broker-dealer receives the order.

center, the time of order receipt is the time that the order was received by the broker or dealer for execution.[191]

The Commission is mindful that some of Rule 605's execution quality statistics may as a general matter differ for the larger broker-dealers, as compared to market centers, to the extent that some of these larger broker-dealers generally or exclusively route orders away. However, it is appropriate for broker-dealers to report on the same execution quality statistics as market centers because the reported statistics can be understood in the context of the specific reporting entity, and the detailed execution quality statistics would allow customers and other market participants to parse the differences among the statistics for each reporting entity. For example, Rule 605 requires statistics for the number of shares executed at the receiving market center and the number of shares executed at any other venue.[192] As discussed above, broker-dealers that generally route the orders that they receive to other venues for execution, and thereby would report these shares as being executed at another venue, may execute certain portions of their order flow internally (*e.g.,* fractional shares).[193] While the Commission considered whether or not broker-dealers should be required to provide execution quality statistics for both shares executed at the receiving broker-dealer and shares executed at any other venue, the Commission decided to propose to keep both of these statistics in the Rule 605 reporting requirements for broker-dealers so as to capture all orders that broker-dealers receive for execution as part of their customer-facing broker-dealer function.[194] Further, differences in certain statistics for broker-dealers as compared to market centers may be more reflective of differences in business models rather than effectiveness in achieving execution quality for covered orders because of differences in order handling practices. The Commission understands that these differences are well-known and are taken into account by market participants when evaluating execution quality statistics. For example, broker-dealers that route customer orders may have consistently longer time to executions as compared to market centers for similar orders, because of the time it takes to route these orders, but this difference is well understood by market participants.

The Commission is also mindful that, for orders routed to other venues for execution, broker-dealers may not have all of the information needed to calculate the proposed statistics at the time of order execution. However, these broker-dealers should be able to obtain the needed information in time to prepare the required reports. Broker-dealers would need to calculate their execution quality statistics, or engage a vendor to calculate the statistics on their behalf, on a monthly basis. At the time that the broker-dealer or its vendor would need to calculate the execution quality statistics, the broker-dealer would have received any needed information about the order's execution from the execution venue and be able to obtain any needed historical price information from publicly available data sources, such as the exclusive plan processors (''exclusive SIPs'').[195] For example, a broker-dealer that routed an order away for execution would receive time of order execution and execution price as part of the trade confirmation provided by the execution venue. The broker-dealer could then use historical price information available via the exclusive SIPs to determine the NBBO at the time of order receipt and at the time of order execution, the number of shares displayed at the NBBO, and the best available displayed price, if such price is being disseminated, and use this data to calculate the required execution quality statistics.[196]

Request for Comment

The Commission seeks comment generally on the proposed expansion of Rule 605 reporting requirements to include larger broker-dealers that meet or exceed the customer account threshold, as well as the other proposed changes to Rule 605 and Rule 600(b) discussed above. In particular, the Commission solicits comment on the following:

1. Should Rule 605 be expanded to apply to broker-dealers? Why or why not? Do commenters agree that it would be useful for customers of certain broker-dealers to be able to access execution quality statistics that are specific to those broker-dealers, rather than needing to rely on the execution quality statistics reported by the market centers to which the broker-dealers route? Do commenters agree that market centers may provide different execution quality to orders based on the routing broker-dealer? Please explain and provide data.

2. Do commenters agree that it would be useful for broker-dealers that are also market centers to produce separate reports pertaining to each function? Why or why not? Do commenters agree that broker-dealers that are also market centers should be required to include in the report pertaining to their market center function all covered orders for which they act as a market center, including as an OTC market maker, rather than only those covered orders executed at the market center? Do commenters agree that broker-dealers that are also market centers should be required to include in the report pertaining to their broker-dealer function all of the covered orders in NMS stocks that they received for execution from any customer, rather than only those orders that do not pertain to their market center function (*i.e.,* those orders for which they do not act as a market center)? Would broker-dealers that are also market centers encounter any specific difficulties when determining which orders to include in each report? Please explain.

3. Is a numerical customer account threshold the proper criterion for determining whether a broker-dealer should be subject to the Rule 605 reporting requirements? If so, is 100,000 or more customer accounts the appropriate amount? Why or why not? If not, should be it higher or lower (*e.g.,* 500,000 or more customer accounts or 10,000 or more customer accounts)? If so, by what amount? Is it appropriate to consider both the number of customer accounts that the broker-dealer carries and the number of customer accounts

[191] *See* proposed Rule 600(b)(109). The time that the order is received by the market center for execution should be the same as the time that the order is received by the broker-dealer for execution when the broker-dealer also acts as a market center for that order.

[192] *See* 17 CFR 242.605(a)(1)(i)(D) and (E). As discussed herein, the Commission is proposing to modify Rule 605(a)(1)(i)(D) to also cover the number of shares executed at the receiving broker or dealer. *See supra* note 155 and accompanying text.

[193] *See supra* note 34 and accompanying text.

[194] If a broker-dealer does not execute any covered orders internally, then that broker-dealer's Rule 605 report would not reflect any shares executed at the receiving broker-dealer. For discussion of what orders broker-dealers that are market centers would include in their reports pertaining to their market center function, see *supra* notes 178–180 and accompanying text.

[195] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18598–99 (describing that the exclusive SIPS, among other things, disseminate core data, which currently consists of: (1) the price, size, and exchange of the last sale; (2) each exchange's current highest bid and lowest offer and the shares available at those prices; and (3) the NBBO). A securities information processor (''SIP'') is defined in section 3(a)(22)(A) of the Exchange Act. *See* 15 U.S.C. 78c(a)(22)(A). Further, an ''exclusive processor'' (also known as an exclusive SIP) is defined in section 3(a)(22)(B) of the Exchange Act. *See* 15 U.S.C. 78c(a)(22)(B).

[196] With respect to NMLOs, the broker-dealer could also use this historical price information available via the exclusive SIPs to determine when the order became executable, based on when the NBBO first reached the order's limit price.

that the broker-dealer introduces? Why or why not? Do commenters believe that it would be more useful to consider the trading volume, either based on share volume or notional volume, or both, of a broker-dealer's customers when setting the reporting threshold? Why are why not? Please explain and provide data to support your argument. Are there alternative approaches that the Commission should adopt in expanding Rule 605's reporting requirements to broker-dealers? If so, please explain the approach in detail, including the benefits and costs of the approach.

4. Should the Commission require all broker-dealers to report pursuant to Rule 605 irrespective of the number of customer accounts that the broker-dealer carries or introduces? Or should such a requirement be subject to a de minimis exclusion? Why or why not? If so, what would be an appropriate de minimis exclusion? Please explain and provide data, if possible.

5. Is three months an appropriate timeframe to use for the Reporting Period, *i.e.,* the minimum length of time for which a broker-dealer would need to comply with Rule 605's reporting requirements once its number of customer accounts meets or exceeds the customer account threshold? Would a shorter or longer time period (*e.g.,* one, two or six months) be more appropriate? If so, by what amount? Does whether or not a broker-dealer uses or could use an outside vendor to prepare reports pursuant to Rule 605 affect this answer? Please explain.

6. Is three months an appropriate grace period from Rule 605's reporting requirements for a broker-dealer that has met or exceeded the customer account threshold for the first time? Would a shorter or longer time period be more appropriate (*e.g.,* one month, two months, or six months)? Do commenters agree that a grace period would not be necessary for broker-dealers that have previously equaled or exceeded the customer account threshold, but subsequently have fallen below the threshold and stopped reporting and then need to restart reporting? If not, what grace period do commenters think would be appropriate? Would one month be sufficient in this context? Are there any other circumstances in which a broker-dealer that has met or exceeded the customer account threshold would need an additional grace period from Rule 605's reporting requirements? Please explain.

7. Should a broker-dealer that is not a market center be required to calculate time of order receipt based on when that broker-dealer received the order? Why or why not? Would it be more useful to customers or other market participants for a broker-dealer that generally routes customer orders to calculate time of order receipt based on when that broker-dealer sent the order to a market center for execution? Please explain and provide data, if possible.

8. Should broker-dealers be required to produce all of the detailed execution quality statistics set forth in Rule 605? Why or why not? Do commenters agree that broker-dealers' customers and other market participants would be able to interpret differences in these execution quality statistics among reporting entities that may be attributable to the context of their different types of business? Do commenters believe that there are any additional execution quality statistics that would be useful to require of broker-dealers? Please explain and provide data, if possible.

9. Would it be difficult for broker-dealers to obtain any of the information needed to calculate the Rule 605 statistics? Why or why not? If so, which statistics in particular? Would broker-dealers have some or all of the information needed to calculate their Rule 605 statistics already, including to meet their obligations to assess whether they are providing best execution for these orders? Do commenters agree that broker-dealers would be able to obtain needed information from the execution venues to which they routed the orders or publicly available sources? Should the Commission exclude certain proposed execution quality statistics that are specific to certain order types, such as executable NMLOs? Why or why not? Please explain.

B. Qualified Auction Mechanisms

Separately, the Commission is proposing rules that generally would require that individual investor orders be exposed to order-by-order competition in fair and open auctions designed to obtain the best prices before such orders could be internalized by wholesalers or any other type of trading center that restricts order-by-order competition.[197] Under those proposed rules, a restricted competition trading center would not be allowed to execute internally a segmented order for an NMS stock until after a broker or dealer has exposed such order to competition at a specified limit price in a qualified auction that meets certain requirements and is operated by an open competition trading center.[198] An ''open competition trading center'' would be a national securities exchange or NMS Stock ATS that meets certain requirements, including being transparent and having a substantial trading volume in NMS stocks independent of qualified auctions.[199] A ''qualified auction'' would be an auction operated by an open competition trading center pursuant to specified requirements that are designed to achieve competition.[200]

If the Commission adopts the Order Competition Rule Proposal and a national securities exchange or NMS Stock ATS that serves as an open competition trading center is required to prepare execution quality reports under current Rule 605, that national securities exchange or NMS Stock ATS would be required to include covered orders that it received for execution in a qualified auction within its blended executing quality statistics, which also would include trading activity outside of the qualified auctions.[201]

The Commission is concerned that there may be differences in execution quality for orders executed within proposed qualified auctions, as compared to other orders executed by market centers outside of these qualified auctions, that would not be apparent in blended execution quality statistics. For example, orders submitted to a qualified auction may be more or less likely to receive price improvement, and may have systematically different fill rates, as compared to similar orders executed in other trading mechanisms. In addition, the Order Competition Rule Proposal would propose both a minimum and maximum time period for

[197] For a full description and discussion of the order competition rule proposal, *see* Securities Exchange Act Release No. 96495 (Dec. 14, 2022) (File No. S7–31–22) (Order Competition Rule) (''Order Competition Rule Proposal''); proposed Rule 615.

[198] *See* Order Competition Rule Proposal; proposed Rule 600(b)(87) (defining ''restricted competition trading center''); proposed Rule 600(b)(91) (defining ''segmented order''); proposed Rule 615(a) (describing the order competition requirement).

[199] *See* Order Competition Rule Proposal; proposed Rule 600(b)(64) (defining ''open competition trading center'').

[200] *See* Order Competition Rule Proposal; proposed Rule 600(b)(81) (defining ''qualified auction''); proposed Rule 615(c) (setting forth requirements for operation of a qualified auction).

[201] As discussed further below, the Commission is proposing to eliminate the separate reporting categories for inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders, and create new reporting categories for executable NMLOs and beyond-the-midpoint limit orders. *See infra* sections IV.B.2.(a) and IV.B.2.(b). While, as proposed, orders submitted to qualified auctions may in many instances be classified as beyond-the-midpoint limit orders, this reclassification would not resolve the Commission's concern about blending execution quality statistics for orders executed in qualified auctions with orders executed outside of these auctions.

the qualified auction.[202] Therefore, the time to execution statistics for orders submitted to a qualified auction may be systematically different from the time to execution statistics of other orders executed at a market center. Further, if a market center receives covered orders for execution in a qualified auction, then that market center would not have discretion about whether to submit these orders into a qualified auction and therefore the distinction between orders executed by the market center within and outside of a qualified auction would not reflect any decision-making on the part of the market center. Thus, it would be more useful for market participants to be able to review execution quality statistics that are specific to covered orders submitted to a qualified auction.

Accordingly, the Commission is proposing to amend Rule 605(a)(1) to state that market centers that operate a qualified auction must prepare a separate report pursuant to Rule 605 pertaining only to covered orders that the market center receives for execution in a qualified auction.[203] This proposed requirement for separate reports is limited to market centers that operate proposed qualified auctions, and would not extend to market centers or broker-dealers that route orders away for execution in a qualified auction. Therefore, a market center or broker-dealer that routes covered orders to an open competition trading center for execution within a proposed qualified auction would not be required to separately report on or otherwise distinguish orders routed to qualified auctions from other types of orders routed away for execution in its Rule 605 reports.[204] In this way, the proposal would follow current Rule 605's focus on the overall execution quality that the reporting entity provided to all covered orders that it received for execution.[205] Having market centers and broker-dealers report on the execution quality provided to orders, regardless of where they are executed, would inform market participants and other observers about overall execution quality that the market center or broker-dealer is able to obtain, including when the market center or broker-dealer decides whether and where to route orders to receive such executions. Further, distinctions between whether an order was routed to a qualified auction or not may depend on the characteristics of the order, such as whether it is a segmented order, rather than the performance of the market center or broker-dealer that routed the order. As such, it would be of more limited utility to have a market center or broker-dealer that routes orders to a qualified auction to produce a separate Rule 605 report specific to such orders.

Although market centers and broker-dealers would not be required to produce a separate Rule 605 report pertaining to orders that they route to a qualified auction, Rule 606 requires routing broker-dealers to disclose certain regularly-used execution venues to which they route orders, and a report prepared by a broker-dealer pursuant to Rule 606 would be required to indicate that orders were routed to a particular qualified auction.[206] A customer of a broker-dealer could then analyze whether and to what extent the broker-dealer routes to a particular market center's qualified auctions (using reports prepared pursuant to Rule 606), and evaluate the execution quality provided by that market center's qualified auctions (using reports prepared pursuant to Rule 605).

The Commission considered extending the proposed requirement for separate Rule 605 reports beyond proposed qualified auctions to include orders submitted to any trading mechanism that seeks to provide liquidity to the orders of individual investors. For example, several national securities exchanges operate retail liquidity programs.[207] However, in the Order Competition Rule Proposal the Commission is proposing a prohibition on certain facilities that are limited, in whole or in part, to the execution of segmented orders and this prohibition would apply to many of the retail liquidity programs currently operated by national securities exchanges.[208]

Request for Comment

The Commission seeks comment on the proposal to require a market center that operates a qualified auction to prepare a separate report under Rule 605 for covered orders that were submitted to a qualified auction if the Order Competition Rule Proposal is adopted. In particular, the Commission solicits comment on the following:

10. Should market centers that operate a proposed qualified auction be required to prepare a separate Rule 605 report for covered orders that are submitted to their qualified auctions? Why or why not? Do commenters agree with limiting this separate reporting requirement to market centers that operate a proposed qualified auction, and not to either broker-dealers that are not market centers or market centers that do not operate a qualified auction? Please explain.

11. Should this separate reporting requirement be limited to a trading mechanism that meets the proposed requirements for a ''qualified auction''? Would it be more useful if a market center prepared a separate report for covered orders submitted to any trading mechanism that seeks to provide liquidity to the orders of individual investors (*e.g.,* a national securities exchange's retail liquidity program), whether or not that trading mechanism operates a ''qualified auction''?

12. Do commenters believe that there are any additional execution quality statistics that would be useful to require of a market center that operates a proposed qualified auction to facilitate comparison among different qualified auctions? For example, would it be useful for a market center that operates a proposed qualified auction to provide data on any price improvement provided in the qualified auction as

[202] *See* Order Competition Rule Proposal; proposed Rule 615(c)(2).

[203] *See* proposed Rule 605(a)(1).

[204] If a larger broker-dealer is also a market center and its market center operates a qualified auction mechanism, that aspect of the market center would be subject to the separate reporting requirement.

[205] For example, currently Rule 605 does not require market centers to distinguish among covered orders routed to particular types of away market centers. Instead, a market center's execution quality statistics are blended statistics pertaining to all covered orders that the market center received for execution, with the limited exception of the statistics for cumulative number of shares of covered orders executed at the receiving market center and at any other venue. *See* 17 CFR 242.605(a)(1).

[206] *See* 17 CFR 242.606(a)(1). For example, if a broker-dealer operates an ATS and that ATS has qualified auctions and a continuous order book, the broker-dealer's Rule 606 report would be required to disclose information about orders that were routed to the ATS's qualified auctions separately from orders that were sent directly to the ATS's continuous order book.

[207] Retail liquidity programs are programs for retail orders seeking liquidity that allow market participants to supply liquidity to such retail orders by submitting undisplayed orders priced at least $0.001 better than the exchange's protected best bid or offer. Each program results from a Commission approval of a proposed rule change made on Form 19b–4 combined with a conditional exemption, pursuant to section 36 of the Exchange Act, from 17 CFR 242.612 (the ''Sub-Penny Rule'') to enable the exchange to accept and rank (but not display) the sub-penny orders. *See, e.g.,* Securities Exchange Act Release Nos. 85160 (Feb. 15, 2019), 84 FR 5754 (Feb. 22, 2019) (SR–NYSE–2018–28) (approving the NYSE retail liquidity program on a permanent basis and granting the exchange a limited exemption from the Sub-Penny Rule to operate the program); 86194 (June 25, 2019), 84 FR 31385 (July 1, 2019) (SR–BX–2019–011) (approving Nasdaq BX, Inc.'s retail price improvement program on a permanent basis and granting the exchange a limited exemption from the Sub-Penny Rule to operate the program).

[208] *See* Order Competition Rule Proposal. The Commission discusses a number of alternatives in the Order Competition Rule Proposal. *See id.* To the extent that any retail liquidity program is retained, separate execution quality statistics specific to orders submitted to those programs may be useful to investors.

measured in relation to any additional price matching offered by the wholesaler that routed the order to the qualified auction? Please explain and provide data, if possible.

C. ATSs and Single-Dealer Platforms

Currently under Rule 605, firms that operate two separate markets must prepare separate reports for each market center.[209] For example, for a firm that acts both as an exchange market maker and as an OTC market maker, each function would be considered a separate market center and Rule 605 requires the firm to prepare separate reports. The requirement to produce separate Rule 605 reports for separate markets allows market participants to assess the execution quality of each market individually, and prevents differences in the nature of each market from obscuring information about execution quality.

Regulation ATS requires each ATS to register as a broker-dealer.[210] Many broker-dealers that operate NMS Stock ATSs have separate lines of business that are distinct from their ATSs, yet also relate to the trading of NMS stocks.[211] In addition, one EMSAC panelist suggested that the Commission require all ATSs and dark pools (*i.e.,* ATSs that do not publish quotations) to report separately from their affiliated broker-dealers under Rule 605.[212] The Commission believes there is a need to address directly what Rule 605 requires with respect to reporting by firms that operate ATSs. By specifying that a broker-dealer that operates an ATS must produce Rule 605 reports that are specific to the ATS and separate from the broker-dealer operator's other trading activity, the Commission intends to increase transparency and regulatory compliance. Accordingly, the Commission proposes to specify in Rule 605(a)(1) that ATSs (as defined in Regulation ATS [213]) shall prepare reports separately from their broker-dealer operators, to the extent such entities are required to prepare reports.[214]

Some OTC market makers, such as wholesalers, operate SDPs through which they execute institutional orders in NMS stocks against their own inventory.[215] Institutional customers often communicate their trading interest using immediate-or-cancel orders (''IOCs'') or IOIs on SDPs.[216] SDPs account for a nontrivial amount of trading volume overall (for example, SDPs accounted for approximately 4% of total trading volume in Q1 2022) and a significant portion of trading volume executed by wholesalers.[217] Co-mingling SDP activity with other market center activity in Rule 605 reports may obscure differences in execution quality or distort the general execution quality metrics for the market center.[218] It would be useful if SDPs reported execution quality statistics separately from those of their associated broker-dealer under Rule 605, so that their customers and other market participants would be able to distinguish SDP activity from more traditional dealer activity. Separate statistics may be particularly useful if a dealer provides an SDP (*i.e.,* a separate routing destination for the execution of orders) for a particular group of customers or type of orders. Therefore, the Commission is proposing to require in Rule 605(a)(1) that any market center that provides a separate routing destination that allows persons to enter orders for execution against the bids and offers of a single dealer shall produce a separate report pertaining only to covered orders submitted to such routing destination.[219]

Request for Comment

The Commission seeks comment on the proposal to specify that an ATS must produce reports separately from its broker-dealer operator, and to require that any market center that provides a separate routing destination that allows persons to enter orders against the bids and offers of a single dealer must produce separate reports pertaining to orders submitted to that routing destination. In particular, the Commission solicits comment on the following:

13. Is it useful for an ATS to produce reports pursuant to Rule 605 that are specific to covered orders submitted to the ATS and separate from orders submitted in connection with other trading activity of its broker-dealer operator? Why or why not?

14. Should a broker-dealer operating an SDP be required to produce reports pursuant to Rule 605 that are specific to orders sent to that routing destination and separate from other trading activity by that dealer, as proposed? Why or why not? Do commenters agree that the description of ''a market center that provides a separate routing destination that allows persons to enter orders for execution against the bids and offers of a single dealer'' accurately describes SDPs? If not, what is a more accurate description of an SDP? Please explain.

IV. Proposed Modifications to Scope of Orders Covered and Required Information

Rule 605 reports group orders by both order size and order type, and require certain standardized information for all types of orders and additional information for market orders and marketable limit orders. The Commission is proposing to modify the order size and order type groupings, and is proposing to make changes to the required information for: all types of orders; market and marketable limit

[209] *See* 17 CFR 242.605(a)(1) (requiring ''every'' market center to produce a report). *See also* Plan, at n.1 (''An entity that acts as a market maker in different trading venues (*e.g.,* as specialist on an exchange and as an OTC market maker) would be considered as a separate market center under the Rule for each of those trading venues. Consequently, the entity should arrange for a Designated Participant for each market center/trading venue (*e.g.,* an exchange for its specialist trading and an association for its OTC trading).''). For a description of ''Designated Participant'' as defined in the Plan, *see supra* note 47.

[210] *See* 17 CFR 242.301(b)(1). 17 CFR 242.301 through 17 CFR 242.304 is generally known as ''Regulation ATS.''

[211] *See, e.g.,* Securities Exchange Act Release No. 83663 (July 18, 2018), 83 FR 38768, 38771 (Aug. 7, 2018) (Regulation of NMS Stock Alternative Trading Systems) (stating that ATSs that trade NMS stocks are increasingly operated by multi-service broker-dealers that engage in significant brokerage and dealing activities in addition to operation of their ATS, and that, for instance, the broker-dealer operator of an NMS Stock ATS may also operate an OTC market making desk or principal trading desk, or may have other business units that actively trade NMS stocks on a principal or agency basis in the ATS or at other trading centers).

[212] *See* Healthy Markets II at 2. *See also* Healthy Markets III at 4 (recommending that the Commission modernize and mandate Rule 605 disclosure for all NMS ATS operators separate and distinct from any affiliated broker-dealer). Additionally, a commenter to the Concept Release on Equity Market Structure recommended that the Commission require all ATSs and dark pools to report under Rule 605. *See* KOR Group I at 3.

[213] 17 CFR 242.300 *et seq.*

[214] *See* proposed Rule 605(a)(1).

[215] Wholesalers and other OTC market makers either execute orders themselves or instead further route the orders to other venues. An SDP always acts as the counterparty to any trade that occurs on the SDP. *See, e.g., Where Do Stocks Trade?,* FINRA.org (Dec. 3, 2021), *available at https://www.finra.org/investors/insights/where_do_stocks_trade* for further discussion.

[216] *See infra* note 615 and accompanying text.

[217] *See infra* notes 618 and 769 and accompanying text.

[218] For example, IOC orders typically have different execution profiles than other types of orders, including lower fill rates, and therefore including orders submitted to a market center's SDP with its other orders will effect a downwards skew on the market center's fill rates. *See infra* note 723 and accompanying text; Table 6.

[219] *See* proposed Rule 605(a)(1). To the extent that a reporting firm produces more than one Rule 605 report, the firm could label each report with the type of business reflected on the report. As discussed above, the Commission proposes to expand the scope of Rule 605 to include larger broker-dealers. *See supra* section III.A. It is possible that firms would need to prepare several Rule 605 reports if they are both a larger broker-dealer and a market center and need to prepare more than one report as a market center, pursuant to proposed Rule 605(a)(1).

order types; and nonmarketable order types. The modifications described below would apply to Rule 605 reports produced by all reporting entities, including larger broker-dealers.

A. Covered Order

The Commission proposes to expand the definition of ''covered order'' in a number of ways.[220] The Commission proposes to include certain orders received outside of regular trading hours and orders submitted with stop prices. Additionally, the Commission is addressing whether Rule 605 requires non-exempt short sale orders to be incorporated into Rule 605 reporting when a price test restriction is in effect for the security.

1. Orders Submitted Pre-Opening/Post-Closing

Currently, Rule 605 reports are required to include only orders received during regular trading hours [221] at a time when an NBBO is being disseminated. The Commission excluded orders submitted during the pre-opening or after the close, among other order types, from the scope of reporting because nearly all of Rule 605's statistical measures required the availability of the NBBO at the time of order receipt as a benchmark.[222] At the time of adoption, the Commission stated that there are substantial differences in the nature of the market between regular trading hours and after-hours, and orders executed at these times should not be blended together in the same statistics.[223] Similarly, orders for which customers requested special handling, including orders to be executed at a market opening price, are excluded from Rule 605 reports because their inclusion would skew the general statistics.[224]

Market participants submit limit orders prior to market open, and these orders are not captured in current Rule 605 reports.[225] Although NMLOs submitted outside of regular trading hours may represent a relatively small percentage of NMLO orders overall, pre-open NMLO submission volume includes a higher concentration of individual investor orders.[226] In order to provide increased visibility into execution quality for individual investor orders, including those submitted outside of regular trading hours, the Commission proposes to expand the scope of Rule 605 reporting to include certain NMLOs submitted outside of regular trading hours if they become executable after the opening or reopening of trading during regular trading hours.[227] The Commission is proposing to expand the definition of ''covered order'' to include any NMLO received by a market center, broker, or dealer outside of regular trading hours or at a time when a national best bid and national best offer is not being disseminated and, if executed, is executed during regular trading hours.[228] As discussed below, the Commission is proposing that NMLOs would be benchmarked from the time they become executable rather than the time of order receipt.[229] The executability of limit orders that are received while an NBBO is not being disseminated would be determined with reference to the opening or re-opening price of the security. This would allow market participants to evaluate execution performance for NMLOs submitted outside of regular trading hours if they become executable during regular trading hours.

The Commission proposes to amend the definition of ''marketable limit order'' to specify that the marketability of an order received when the NBBO is not being disseminated would be determined using the NBBO that is first disseminated after the time of order receipt. Specifically, the Commission proposes that an order received at a time when a national best bid and national best offer is not being disseminated would be a marketable limit order if it is a buy order with a limit price equal to or greater than the national best offer at the time that the national best offer is first disseminated during regular trading hours after the time of order receipt, or if it is a sell order with a limit price equal to or less than the national best bid time at the time that the national best bid is first disseminated during regular trading hours after the time of order receipt.[230]

Any limit order received outside of regular trading hours or during a trading halt that is marketable based on the first disseminated NBBO during regular trading hours after the time of order receipt would not be a covered order for purposes of Rule 605.[231] The Commission's proposed definition excludes market orders and marketable limit orders submitted prior to open or during a trading halt because such orders would generally execute at the opening or re-opening price. Therefore, their inclusion in general market and marketable limit order statistics would skew both time to execution statistics and other measures of execution quality if aggregated with market and marketable limit orders received during regular trading hours. While including market and marketable limit orders submitted prior to open or during a trading halt within the definition of covered order and requiring that the execution statistics for these types of orders be reported as a separate order type category would avoid the concern about skewed statistics, it would add to the complexity of the report.

The current definition of covered order includes orders received during regular trading hours while an NBBO is being disseminated but *before* the primary listing market has disseminated its first quotations in the security. Prior to a primary listing market disseminating its first quotations in a security, disseminated quotations often reflect spreads that vary significantly from the norm.[232] To prevent such quotations from skewing the execution quality statistics, the Commission exempted orders from inclusion in Rule

[220] *See* proposed Rule 600(b)(30).

[221] ''Regular trading hours'' is defined as the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to 17 CFR 242.605(a)(2). *See* 17 CFR 242.600(b)(77). The Commission is proposing to renumber the definition of ''regular trading hours'' as proposed Rule 600(b)(91).

[222] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75421.

[223] *See id.,* text accompanying note 39. Specifically, the Commission stated that the average quoted spread, average effective spread, and trade price volatility increased significantly for certain securities after the close of regular trading hours. *See id.* at n.39.

[224] *See id.* at 75421.

[225] *See supra* notes 123–125 and accompanying text (commenter to 2018 Rule 606 Amendments and petitioner for rulemaking recommending inclusion of orders submitted prior to market open).

[226] Analysis of CAT data found that NMLOs submitted prior to open and designated as only able to execute during regular hours make up only a small percentage of order flow when compared to a sample 10-minute window of NMLOs submitted during regular hours. However, the analysis shows that individual investor orders are relatively concentrated in order flow submitted outside of regular market hours. Specifically, pre-open submission volume contains a larger percentage of individual investor shares than the sample time window during regular trading hours, at least for off-exchange market centers. *See infra* notes 672–673 and accompanying text.

[227] *See* proposed Rule 600(b)(20) (defining ''categorized by order type'' to include executable NMLOs and executable orders submitted with stop prices).

[228] *See* proposed Rule 600(b)(30).

[229] *See infra* section IV.B.2.(a).

[230] *See* proposed Rule 600(b)(57).

[231] For example, a market or marketable limit order that is not received by a market center or broker-dealer during regular trading hours at a time when the NBBO is being disseminated would not be a covered order under proposed Rule 600(b)(30). In addition, the covered order definition would continue to exclude any order for which the customer requests special handling for execution, including orders to be executed at a market opening price, *see* proposed Rule 600(b)(30), and therefore market-on-open (''MOO'') orders and limit-on-open (''LOO'') orders would be excluded.

[232] *See* Letter from Annette L. Nazareth, Director, Division of Market Regulation to Theodore Karn, President, Market Systems, Inc., dated June 22, 2001 (''Market Systems Exemptive Letter'') at 2.

605 reports that are received prior to the dissemination of the primary listing market's first firm, uncrossed quotations for a trading day (''Opening Exemption'').[233] With respect to orders received during regular trading hours but before the primary listing market has disseminated its first firm, uncrossed quotation, the Commission continues to believe, for the same reasons it granted this exemption, that including such orders could distort execution quality statistics. Therefore, the Commission is proposing to incorporate this exemptive relief into the proposed definition of covered order with respect to market or limit orders received during regular trading hours at a time when an NBBO is being disseminated.[234] However, pursuant to the proposed amendments to Rule 605, NMLOs (including orders submitted with stop prices) received outside of regular trading hours or at a time when an NBBO is not being disseminated could be considered covered orders, provided the NMLOs were not executed outside of regular trading hours.[235] Inclusion of these orders in Rule 605 reports would be useful to market participants, even though such orders necessarily would be received before the primary listing market has disseminated its first firm, uncrossed quotation and thus fall within the scope of the Opening Exemption. Because the Commission is proposing to incorporate the exemptive relief reflected in the Opening Exemption into the Rule with respect to market or limit orders received during regular trading hours, but believes it would be useful to include the NMLOs described above in Rule 605 reports, the Commission is also proposing to rescind the Opening Exemption.[236]

As a result of the proposed inclusion of limit orders submitted after closing and the proposed changes to the categorization of NMLOs described in section IV.B.2, limit orders could be received for execution and fall within the scope of Rule 605 on a day other than the day of order receipt. Under current Rule 605(a)(1), a reporter must prepare a monthly report on the covered orders in NMS stocks that it received for execution from any person. In order to address this scenario, the Commission proposes that a covered order would be required to be included in the report for the month in which it becomes executable if the day of receipt and the day it initially becomes executable occur in different calendar months. Therefore, the Commission proposes to amend Rule 605(a)(1) to require a market center, broker, or dealer to include in its monthly report, in addition to the covered orders in NMS stocks that it received for execution from any person, those covered orders in NMS stocks that it received for execution in a prior calendar month but which remained open.[237]

2. Stop Orders

The definition of ''covered order'' excludes orders with special handling instructions, including orders submitted with stop prices.[238] Therefore, orders submitted with stop prices are excluded from Rule 605 reports.

The Commission preliminarily understands that market centers and broker-dealers may differ in how they handle stop orders, and the current lack of consistent information regarding executions of such orders may prevent investors from comparing the execution quality of such orders. Further, stop orders are likely to hit their stop prices, and are often executed, during periods of price volatility or downwards market momentum, which may entail less than favorable execution conditions. Given the potential for variation across market centers and broker-dealers, as well as the market conditions under which stop orders may execute, the Commission believes including stop orders within the scope of the Rule would benefit market participants by allowing them to analyze these variations in execution quality. Further, as stated by the petitioner, including stop orders within the Rule's scope would provide a more complete view of the orders certain broker-dealers may use when assessing the execution quality market centers provide.[239]

Orders submitted with stop prices are often submitted well before their stop prices are reached. In order to provide an ''apples-to-apples'' comparison of stop orders, the Commission is proposing to measure the execution quality of orders submitted with stop prices from the time their stop prices are reached, *i.e.,* when such orders become executable. As part of the proposed definition of ''executable,'' the Commission is proposing to specify that executable means, for any buy order submitted with a stop price, that the stop price is equal to or greater than the national best bid during regular trading hours, and, for any sell orders submitted with a stop price, that the stop price is equal to or less than the national best offer during regular trading hours.[240] Incorporation of the ''executable'' concept would have two effects. First, stop orders would be reported as part of a Rule 605 report only if they become executable.[241] Second, the point that a stop order first becomes executable would be used as a benchmark for several execution quality metrics, including average effective spread, average effective over quoted spread, average realized spread, and average time to execution statistics.[242] The Commission is proposing to use the time an order becomes executable rather than the time of order receipt based on the understanding that customers, at least for purposes of evaluating execution quality of stop orders, would generally expect such orders to be executed close in time to when their stop prices are triggered. Including executable orders submitted with stop prices within the scope of the Rule would help investors compare the performance of market centers and broker-dealers from a point in time when such orders could reasonably be expected to execute. Accordingly, the Commission proposes to rescind the exclusion of orders submitted with stop prices within the definition of covered

[233] *See id.* (exemption from reporting under Rule 11Ac1–5, the predecessor to Rule 605). In addition to the Opening Exemption, the Market Systems Exemptive Letter included a separate exemption from the Rule for orders received during a time when the consolidated BBO reflects a spread that exceeds $1 plus 5% of the midpoint of the consolidated BBO (''Spread Width Exemption'').

[234] *See* proposed Rule 600(b)(30).

[235] *See id.*

[236] Because the Spread Width Exemption is not inconsistent with the proposed amendments to Rule 605, the Commission would not rescind the Spread Width Exemption. The Commission continues to believe that orders received during a time when the consolidated BBO reflects a spread that exceeds $1 plus 5% of the midpoint of the consolidated BBO ''could be the result of potentially erroneous quotes or of abnormal trading conditions'' and their inclusion ''could significantly affect the comparability and reliability of the execution quality measures in market center monthly reports.'' Market Systems Exemptive Letter at 2. The Commission may adopt an updated or modified exemption under Rule 605(b) to further refine the exemption if, for example, additional factors could be considered reliable indicators of orders that could be the result of erroneous quotes or abnormal trading conditions. *See* 17 CFR 242.605(b).

[237] *See* proposed Rule 605(a)(1).

[238] *See* 17 CFR 242.600(b)(22). Generally, a limit order submitted with a stop price becomes a market order when the stop price is reached. A stop order to buy becomes a market order when the security is bid or trades at or above the specified stop price; a stop order to sell becomes a market order when the security is offered or trades at or below the specified stop price.

[239] *See supra* note 123 and accompanying text.

[240] *See* proposed Rule 600(b)(42). *See also infra* note 303 and accompanying text (discussing the definition of ''executable'' as it relates to other non-marketable order types).

[241] *See* proposed Rule 600(b)(20) (defining ''categorized by order type'' to include a category for ''*executable* orders submitted with stop prices'') (emphasis added).

[242] For further discussion of these metrics, *see infra* sections IV.B.3, IV.B.4.(a), IV.B.4.(b), IV.B.4.(d), and IV.B.6.

order.[243] As proposed, these orders would comprise a separate order type category to help ensure comparability of execution quality statistics since, as stated above, stop orders more often may execute under volatile or downward-trending market conditions.[244]

3. Non-Exempt Short Sale Orders

Commission staff has taken the position that staff would view all short sale orders that are not marked ''short exempt'' (''non-exempt short sale orders'') as special handling orders and, in the staff's view, these orders may be excluded from the definition of ''covered order'' in Rule 600(b)(15).[245] Non-exempt short sale orders are subject to a price test under Rule 201 of Regulation SHO (''Rule 201'') that sets forth a short sale circuit breaker that is triggered in certain circumstances, after which time a price restriction will apply to short sale orders in that security for that day and the following day.[246] In 2013, Commission staff stated that because in certain circumstances non-exempt short sale orders are subject to a price test under Rule 201, and the circumstances could vary for different securities and different days throughout the month, staff would view *all* non-exempt short sale orders as subject to special handling.[247]

The Commission preliminarily believes that for purposes of this proposal, not all non-exempt short sale orders should be excluded from the scope of Rule 605 reporting. When a non-exempt short sale order is subject to a price test restriction under Rule 201 of Regulation SHO, a trade may only take place at least one tick above the national best bid.[248] These tick-sensitive orders could be ''orders to be executed only on a particular type of tick or bid,'' which is one of the types of special handling orders specified in the definition of covered order.[249] However, excluding *all* non-exempt short sale orders from Rule 605 reporting, regardless of whether or not a Rule 201 price test restriction is in effect, excludes a significant portion of short sale orders that are not tick-sensitive. Non-exempt short sale orders do not appear to be tick-sensitive the majority of the time because they are infrequently subject to a price test restriction. Analysis shows that, between April 2015 and March 2022, an event that triggered the Rule 201 circuit breaker only occurred on 1.7% of trading days for an average stock.[250] The analysis also found that around 18% of trigger events occurred the day after a previous trigger event, and around 46% of trigger events occurred within a week after a previous trigger event, implying that these trigger events tend to be relatively infrequent and clustered around a small number of isolated events. Moreover, because non-exempt short sale orders are not tick sensitive when a short sale price test is not in effect, the inclusion of these orders would not skew execution quality statistics.[251]

In addition, including non-exempt short sale orders for which a price test restriction is not in effect for the security within Rule 605 statistics would lead to a more complete picture of reporting entities' execution quality, because there is evidence that short sales compose a large segment of trades, and likely also order flow. Analysis of short volume data shows that, between August 2009 and February 2021, short selling constituted an average of 47.3% of trading volume for non-financial common stocks.[252] As discussed further below, evidence suggests that hedge funds make up the majority of the short selling market, while an academic working paper found that, between January 2010 and December 2016, around 10.92% of retail trading was made up of short sales.[253]

Therefore, under the proposal, non-exempt short sale orders would not be considered special handling orders unless a price test restriction is in effect for the security. Unless another exclusion applies, non-exempt short sale orders would fall within the definition of covered order and thus within the scope of Rule 605 reporting.[254] Conversely, during a short sale price test, a short sale order not marked ''exempt'' would be subject to special handling and would be excluded from the definition of covered order and thus from Rule 605 reporting.

Request for Comment

The Commission seeks comment generally on the proposed expansion of Rule 605 reporting requirements to include certain orders received outside of regular trading hours and orders submitted with stop prices, as well as the proposal to incorporate non-exempt short sale orders into Rule 605 unless a price test restriction is in effect for the security. In particular, the Commission solicits comment on the following:

15. Should the security's opening or re-opening price be required to be used as a benchmark to determine whether a limit order submitted outside of regular trading hours is marketable or non-marketable? If not, what would be an alternative benchmark? Please explain.

16. Should the definition of ''covered order'' include NMLOs submitted outside of regular trading hours or when the NBBO is not being disseminated (*i.e.,* limit orders that are not marketable based on the security's opening or re-opening price)? Should market orders and marketable limit orders submitted outside of regular trading hours or when the NBBO is not being disseminated be included within the definition of ''covered order''? Why or why not? Should these orders be grouped with other market or marketable limit orders or as new order type categories?

17. Do commenters agree that requiring orders submitted with stop prices to be included in Rule 605 reports, and segregating them into their own order type category, would avoid distorting execution quality statistics? If not, why not?

18. Do commenters agree that periods when a short sale price test is in effect are relatively infrequent and clustered around a small number of isolated events? Why or why not?

19. Should other types of orders be included within the scope of covered orders? For example, currently intermarket sweep orders (''ISOs'') with a limit price inferior to the NBBO may

[243] *See* proposed Rule 600(b)(30) (eliminating the express carve out of orders submitted with stop prices from the definition of ''covered order'').

[244] *See also infra* section IV.B.2.a below for more detailed description of the changes to categorization by order type, including a new category for executable orders with stop prices.

[245] 17 CFR 242.600(b)(15). *See* ''Responses to Frequently Asked Questions Concerning Rule 605 of Regulation NMS'' (Feb. 22, 2013) (''2013 FAQs'').

[246] 17 CFR 242.201. Rule 201 generally requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the execution or display of a short sale at an impermissible price when a stock has triggered a circuit breaker by experiencing a price decline of at least ten percent in one day. Once the circuit breaker in Rule 201 has been triggered, the price test restriction will apply to short sale orders in that security for the remainder of the day and the following day, unless an exception applies. *See* 17 CFR 242.201(b)(1). One exception is for the execution or display of a short sale order marked ''short exempt.'' *See* 17 CFR 242.201(b)(1)(iii)(B); 17 CFR 242.201(c).

[247] *See* 2013 FAQs.

[248] *See* 17 CFR 242.201(b)(1)(i).

[249] *See* 17 CFR 242.600(b)(22).

[250] *See infra* note 662 and accompanying text.

[251] In adopting Rule 605, the Commission stated that the definition of covered order excludes orders (including short sales that must be executed on a particular tick or bid) for which the customer requested special handling for execution and that, if not excluded, would skew general statistical measures of execution quality. *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75421.

[252] *See infra* note 820 and accompanying text.

[253] *See infra* notes 821–827 and accompanying text. *See also supra* note 123 and accompanying text (petitioner recommending inclusion of short sales in Rule 605).

[254] If an order is otherwise subject to special handling it would not be a covered order. *See* proposed Rule 600(b)(30).

be viewed to be subject to special handling and are excluded from Rule 605 reports. Should these or other orders types be included within the scope of covered orders? If so, please explain any additional requirements or conditions that would help ensure comparability of order execution quality statistics across reporting entities. For example, if a new order type should be within the scope of covered orders, should it be a new order type category or be added to an existing or proposed order type category (as described in part IV.B.2 below)?

B. Required Information

The categories in Rule 605 reports are intended to strike a balance between sufficient aggregation of orders to produce statistics that are meaningful on the one hand, and sufficient differentiation of orders to facilitate fair comparisons of execution quality across market centers on the other hand.[255] When adopting the Rule, the Commission stated that its experience with the categories prescribed by the Rule may indicate ways in which they could be improved in the future.[256]

1. Categorization by Order Size

Rule 600(b)(13) defines ''categorized by order size'' as dividing orders into separate categories based on the number of shares composing an order.[257] For the purposes of Rule 605 reports, the largest size category has been limited to include only orders greater than 5,000 shares and less than 10,000 shares.[258] The Commission proposes to amend the definition of ''categorized by order size'' to provide the following categories for order sizes: (i) less than 1 share; (ii) odd-lot; (iii) 1 round lot to less than 5 round lots; (iv) 5 round lots to less than 20 round lots; (v) 20 round lots to less than 50 round lots; (vi) 50 round lots to less than 100 round lots; and (vii) 100 round lots or greater.[259]

The reasons for these changes are discussed below.

(a) Round Lot Multiple Characterization

Currently, Rule 605 reports utilize order size categories based on the numbers of shares in the order (*e.g.,* 100–499 shares and 500–1,999 shares). Historically, round lots generally have been viewed as groups of 100 shares, and current Rule 605 reflects this.

In recent years, the prices of some of the most widely held stocks have increased significantly,[260] and differences in price affect how stocks trade. For example, a 100-share order of a $1,200 stock would likely have very different execution quality statistics than a 100-share order of a $10 stock because more capital is at risk in the former. But under current Rule 605, these orders are reported in the same order size category.

Further, many of Rule 605's execution quality measures rely on the NBBO as a benchmark.[261] In adopting the Market Data Infrastructure rules (the ''MDI Rules''), the Commission stated that the new definition of round lot will improve certain Rule 605 statistics. The Commission stated that the definition of round lot would allow additional orders of meaningful size to determine the NBBO, and, therefore, the execution quality and price improvement statistics required under Rule 605 would be based upon an NBBO that the Commission believes is a more meaningful benchmark for these statistics.[262] As a result of the new round lot definition,[263] the NBBO in higher-priced NMS stocks is based on smaller, potentially better-priced orders.[264] The newly adopted definition of round lot is tiered based on the NMS stock's prior month closing price.[265] Upon implementation, the NBBO will be calculated based on the new definition of round lot.[266]

The Commission proposes to modify the order size categories to utilize the new definition of round lot and include odd-lots, fractional shares, and larger order sizes. Because the new definition of round lot incorporates the current market price of the security, the Commission believes that notional buckets and caps suggested by commenters are not necessary.[267] The proposed order size categories would correspond to the existing share-based order size categories to reflect that round lots historically had been viewed as groups of 100 shares. For example, the category for 100 to 499 shares would instead be 1 round lot to less than 5 round lots. Because the current exemptive relief[268] effectively caps the existing order size category of 5,000 or more shares to 9,999 shares, the second largest order size category would be 50 round lots to less than 100 round lots. The Commission is also proposing to add new order size categories for odd-lots, fractional shares, and larger-sized orders as discussed below.[269]

Additionally, modifying the order size categories to reflect the number of round lots would better allow Rule 605 reports to group orders with similar characteristics and notional values, and thereby provide more useful execution quality information. In particular, with the NBBO to be calculated based on the new definition of round lot, updating the order size categories to be based on round lots should allow for better comparisons of statistics that rely on the NBBO as a benchmark, including price improvement statistics. The NBBO is used as a benchmark throughout Rule 605 to determine marketability of orders, effective and realized spread, and price improvement/dis-improvement statistics. If the order size category were not based on the round lot size for that stock, Rule 605 statistics

[255] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75423.

[256] *See id.*

[257] 17 CFR 242.600(b)(13). *See supra* note 40.

[258] *See infra* note 281 and accompanying text.

[259] *See* proposed Rule 600(b)(19).

[260] *See supra* note 16.

[261] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75421 (stating that nearly all of the statistical measures included in the Rule depend on the availability of a consolidated BBO at the time of order receipt).

[262] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18621.

[263] Specifically, the Commission re-defined ''round lot'' as: 100 shares for stocks priced at $250 or less, 40 shares for stocks priced at $250.01 to $1,000, ten shares for stocks priced at $1,000.01 to $10,000, and one share for stocks priced at $10,000.01 or more. *See* 17 CFR 242.600(b)(82).

[264] As described in the MDI Adopting Release, orders currently defined as odd-lots often reflect superior pricing. *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18616 (describing analysis that made similar findings using data from May of 2020). A recent working paper analyzed the effect of the new round lot definition and found that for sample stocks in the 40-share round lot category the incidence of better-priced odd-lot quotes fell by approximately 4.8% and for sample stocks in the 10-share round lot category the incidence fell by approximately 22%. *See* Bartlett, et al. at 5.

[265] The round lot definition, together with the increased availability of better priced odd-lot information, was designed to provide investors with valuable information about the best prices available and help to facilitate more informed order routing decisions and the best execution of investor orders. *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18602.

[266] *See id.* The Commission is separately proposing to accelerate the implementation of the round lot definition. *See* Securities Exchange Act Release No. 96494 (Dec. 14, 2022) (File No. S7–30–22) (Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders) (''Minimum Pricing Increments Proposal''). The Commission established a phased transition plan for the implementation of the MDI Rules, which provided for the implementation of the round lot definition as part of the final phase of implementation. *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18698–18701. At a minimum, round lot implementation will be two years after the Commission's approval of the plan amendment(s) required by Rule 614(e). Until the round lot definition adopted pursuant to the MDI Rules is implemented, round lots continue to be defined in exchange rules. *See id.* at 16738. For most NMS stocks, a round lot is defined as 100 shares. According to TAQ Data, as of April 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.

[267] *See supra* notes 128–132 and accompanying text.

[268] *See* Large Order Exemptive Letter.

[269] *See infra* section IV.B.1.(b)(1) and (2). The largest order size category would be 100 round lots or more. *See* proposed Rule 600(b)(19)(vii).

would show, for example, larger amounts of price improvement for high-priced stocks based on the presumably wider NBBO. However, the statistics would still be comparable across market centers and broker-dealers since they would all be utilizing the same benchmark.

(b) New Sizes Within Scope

(1) Odd-Lots and Orders Less Than a Share

Currently, Rule 605 does not require reporting for orders smaller than 100 shares, including odd-lot orders or fractional share orders (*i.e.,* orders for less than one share).[270] Commenters suggested amending the scope of the Rule to include odd-lot orders.[271] One commenter offering suggestions regarding enhancements to Rule 605 and Rule 606 from a retail perspective stated that, while ''odd lots may not represent a high percentage of executed share volume, they do represent a high percentage of incoming executed order volume.''[272] Market participants stated that odd-lots make up a majority of all trades.[273] Particularly as stock prices have risen,[274] odd-lots have come to represent an increased percentage of orders.[275] Analysis using TAQ data found that odd-lots increased from around 15% of trades in January 2014 to more than 55% of trades in March 2022.[276] An analysis of data from the SEC's MIDAS analytics tool shows that, in Q1 2022, odd-lots made up 81.2% of on-exchange trades (40% of volume) for stocks in the highest price decile and 25% of on-exchange trades (2.72% of volume) for stocks in the lowest price decile.[277] Based on changes the Commission has observed in the market, the observations of commenters and other market participants, as well as its analysis, the Commission preliminarily believes the exclusion of order sizes smaller than 100 shares excludes an important segment of order flow. Therefore, the Commission is proposing a new order size category for odd-lots.

Similarly, fractional share orders have become increasingly popular with individual investors as certain stock prices have risen and certain broker-dealers have made fractional shares available to their customers.[278] Analysis of CAT data from March 2022 found that executed orders with a fractional share component originated from over 5 million unique accounts. Orders for less than a single share represent a significant portion of fractional orders executions.[279] In order to capture execution quality information for these orders, the Commission is proposing a new size category for orders less than a share. To the extent an order with a fractional share component is for more than a single share, it would not be included in this size category to help ensure comparability of order execution quality statistics.[280]

(2) Larger-Sized Orders

Currently, Rule 605 does not require reports that include orders with a size of 10,000 shares or greater pursuant to exemptive relief provided by the Commission in 2001.[281] In granting the exemption, the Commission stated that a primary objective of the Rule is to ''generate statistical measures of execution quality that provide a fair and useful basis for comparisons among different market centers,'' and reasoned that the exclusion of such orders would help assure greater comparability of statistics in the largest size category of 5,000 or more shares.[282]

Commenters have advocated for the Commission to include larger-sized orders in Rule 605 reports. One commenter responding to the 2018 Rule 606 Amendments stated that the exclusion of certain types of marketable limit orders, including those of 10,000 shares or more, undermines the utility of Rule 605 reports.[283] The entity that petitioned for rulemaking in this area stated that because of the variation in stock prices (*e.g.,* a 5,000 share order with a notional value of $17.3 million and a 5,000 share order with a notional value of $76,000), categorizing orders by share size is no longer effective.[284] The petitioner recommended the Commission include both odd-lots and orders of 10,000 or more shares, and add notional size categories to the metrics, with a notional cap.[285]

The Commission proposes to rescind the exemptive relief for orders of 10,000 or more shares and include these orders within the scope of Rule 605 reports. The Commission believes that including such larger-sized orders would improve execution quality statistics in Rule 605 reports by including information about an important segment of order flow. Analysis of TAQ data shows that the number of shares associated with trades that were for 10,000 or more shares as a percent of total executed shares was 11.3% in March 2022.[286] In addition, analysis of the distribution of NMLO sizes in order submission data from MIDAS for the month of March 2022, shows that, while NMLOs of 10,000 or more shares made up only 0.09% of order flow in terms of number of orders, they made up nearly 7.8% of order flow in terms of share volume.[287] Although

[270] There are a variety of circumstances in which an order for an NMS stock submitted to a broker-dealer results in a fractional share. Examples include customer orders to buy: (1) a fraction of a share (*e.g.,* order to buy 0.5 shares); (2) shares with a fractional component (*e.g.,* order to buy 10.5 shares); and (3) a dollar amount that leads to the purchase of a fractional share (*e.g.,* order to buy $1,223 worth of XYZ stock at $50 per share or 24.46 shares).

[271] *See* Healthy Markets IV (discussing recommended reforms to Rule 605 and Rule 606) at 3; IHS Markit Letter (responding to the 2018 Rule 606 Amendments) at 5, text accompanying n.15; EMSAC III (recommendations regarding modifications to Rule 605 and Rule 606) at 2.

[272] FIF I at 1. The commenter also stated that retail investors account for a notable portion of odd-lot trades. *See* FIF I at 1. Later, the commenter stated that odd-lots represent close to 50% of self-directed orders. *See* FIF III at 4.

[273] *See* ''Effective Spreads, Payment for Order Flow, and Price Improvement'', RBC Capital Markets (Mar. 2022) at 5. *Cf.,* Virtu Petition at 4, n.13 and accompanying text (odd-lots make up 70% of all trades in high priced stocks).

[274] *See supra* note 16.

[275] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18616 (describing analyses confirming observations made in the MDI Proposing Release that a significant proportion of quotation and trading activity occurs in odd-lots, particularly for frequently traded, high-priced stocks).

[276] *See supra* note 91.

[277] *See* dataset ''Summary Metrics by Decile and Quartile'' *available at https://www.sec.gov/marketstructure/downloads.html.*

[278] *See infra* note 642. Orders with a fractional share component may be executed in a number of ways: a broker-dealer may (i) internalize the entire order as principal using its own inventory; (ii) create a representative order that rounds up the order to the nearest whole number using its own inventory and route it for execution, then fill the original customer's fractional order after the representative order is executed; (iii) internalize the fractional component of the order (*e.g.,* 0.5 shares) and send the whole share component (*e.g.,* 2 shares) away for execution; or (iv) aggregate different fractional orders to make one large representative order and then route it for execution, and fill the original fractional orders post-execution.

[279] Analysis of CAT data from March 2022 found that almost 68% percent (31.67 million) of the 46.63 million executed orders with a fractional component were for less than a single share. *See infra* note 644 and accompanying text.

[280] For example, a covered order for 10.5 shares in a security with a 100-share round lot would be categorized as an odd-lot. *See* proposed Rule 600(b)(19).

[281] *See* Large Order Exemptive Letter.

[282] *Id.* at 2.

[283] *See* IHS Markit Letter at 34. *See also* KOR Group I at 4 (responding to the Commission's Concept Release on Equity Market Structure, suggesting elimination of a share size cap on Rule 605 reporting).

[284] *See* Virtu Petition at 4–5.

[285] *See id.* at 5.

[286] *See infra* note 649 and accompanying text. The percentage of larger-sized trades has fluctuated over time, in part due to broker-dealers' use of Smart Order Routers (''SORs'') to break up their institutional investor customers' large parent orders into smaller-sized child orders along with other market changes, such as the overall increase in stock prices. The rate of larger-sized trades has declined from a rate of more than 25% in late 2003, but has increased from 6.7% in August 2011. *See id.*

[287] *See infra* Figure 4. While larger-sized orders comprise a non-negligible percent of order flow,

the Commission had concerns about the comparability of execution quality statistics for larger-sized orders when adopting the Rule, the Commission expects that the proposed inclusion of two additional categories for larger order sizes [288] (*i.e.,* corresponding to 5,000–9,999 shares and 10,000 or more shares in the case of a 100 share round lot) would allow for better comparability of statistics. The proposed amended definition of ''categorized by order size'' that aligns with the new definition of round lot would enhance such comparability.

Request for Comment

The Commission seeks comment on the proposed changes to the definition of ''categorized by order size.'' In particular, the Commission solicits comment on the following:

20. Should fractional share orders be required to be included in Rule 605 reports? Why or why not?

21. Should odd-lot orders be required to be included in Rule 605 reports? Why or why not?

22. Should orders of 10,000 or more shares be required to be included in Rule 605 reports? Why or why not? Do commenters believe that including such orders would skew the statistics for the largest order size category? Would commenters support one or more notional caps for share size buckets (such as 10,000 shares or greater), and if so, why? Please explain and provide data.

23. Do commenters agree with the proposed modification of order size categories? If not, why not? Would categories based on number of shares—or the following categories based exclusively on notional value: $1 to less than $10,000.00, $10,000.01 to less than $25,000.00, $25,000 to less than $100,000, and over $100,000—be more useful, less burdensome, or more cost-effective as either a permanent or an alternative measure until such time as the new definition of round lot has been implemented? Do commenters recommend different size or notional value categories? If so, please describe such categories.

2. Categorization by Order Type

Under Rule 605(a)(1), monthly reports are categorized by order type. Currently, ''categorized by order type'' means dividing orders into separate categories for market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders.[289] As discussed below, the Commission proposes to modify this definition to mean dividing orders into separate categories for market orders, marketable limit orders (excluding immediate-or-cancel orders), marketable immediate-or-cancel orders, beyond-the-midpoint limit orders, executable non-marketable limit orders (excluding beyond-the midpoint limit orders and orders submitted with stop prices), and executable orders submitted with stop prices.[290] The following compares the order type categories under the current Rule to the proposed new order type categories:

Existing order type category	Order type category as proposed
Market	Market, Marketable IOC.
Marketable Limit	Marketable Limit, Marketable IOC.
Inside-the-Quote Limit	Beyond-the-Midpoint Limit, Executable NMLO.
At-the-Quote Limit	Executable NMLO.
Near-the-Quote Limit	Executable NMLO.[291]
[Not Included][292]	Executable NMLO, Executable Stop.

The Commission believes that the proposed categories will improve execution quality information within Rule 605 reports and better group comparable orders.

(a) NMLOs and Orders Submitted With Stop Prices

The Commission proposes to eliminate the three separate categories for types of NMLOs (*i.e.,* inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders) and to replace them with new categories: non-marketable limit orders that become executable (excluding orders submitted with stop prices and beyond-the-midpoint limit orders) and beyond-the-midpoint limit orders.[293] Current Rule 605 reports group NMLOs as inside-the-quote, at-the-quote, and near-the-quote, and exclude NMLOs that are more than ten cents away from the quote at the time of order receipt.[294] When proposing to exclude NMLOs with a limit price more than ten cents away from the NBBO, the Commission reasoned that the execution quality statistics for these types of orders may be less meaningful because executions of these types of orders depend more on the order's limit price and price movement in the market than on handling by the market center.[295]

Commenters supported including NMLOs further away from the quote in

some or possibly most of these large orders may be not held to the market, in which case they would not be included in Rule 605 reports even without the exemptive relief.

[288] *See supra* text following note 267, notes 268–269 and accompanying text. The two largest buckets in proposed Rule 600(b)(19)(vi) and (vii) group together orders of between 50 round lots to less than 100 round lots and orders of 100 round lots or greater, respectively.

[289] *See* 17 CFR 242.600(b)(14). The Commission is proposing to renumber the definition of ''categorized by order type'' as proposed Rule 600(b)(20).

[290] *See* proposed Rule 600(b)(20). Market orders and marketable limit orders are existing categories under the current definition of ''categorized by order type.'' *See* 17 CFR 242.600(b)(14).

[291] Under the proposal, near-the-quote limit orders would fall outside the scope of the order type categories if they do not become executable. *See infra* section IV.B.2.(a) for discussion of the definition of executable.

[292] The following orders fall outside the scope of the current order type categories: (1) non-marketable buy orders and non-marketable sell orders with limit prices that are more than $0.10 lower than the national best bid or higher than the national best offer, respectively, at the time of order receipt; and (2) stop orders. Under the proposal, such orders, if they become executable, would fall within the order types for executable NMLOs or executable stop orders. However, these orders would fall outside the scope of the order type categories as proposed if they do not become executable.

[293] *See supra* text accompanying note 290. Beyond-the-midpoint limit orders, discussed in more detail in section IV.B.2.(b) *infra,* are a type of NMLO that is priced more aggressively than the midpoint.

[294] *See* 17 CFR 242.600(b)(14). Inside-the-quote limit order, at-the-quote limit order, and near-the-quote limit order mean non-marketable buy orders with limit prices that are, respectively, higher than, equal to, and lower by $0.10 or less than the national best bid at the time of order receipt, and non-marketable sell orders with limit prices that are, respectively, lower than, equal to, and higher by $0.10 or less than the national best offer at the time of order receipt. *See* 17 CFR 242.600(b)(37). The Commission is proposing to eliminate this definition of inside-the-quote limit order, at-the-quote limit order, and near-the-quote limit order. These defined terms would no longer be used with the changes to order type categories proposed herein. The proposed new order type categories for NMLOs would focus on whether a NMLO becomes executable rather than on how a NMLO's limit price compares to the quote, as discussed further below.

[295] *See* Proposing Release, 65 FR 48406 (Aug. 8, 2000) at 48414.

Rule 605 reports but noted the difficulty of providing meaningful execution quality statistics for such orders. One commenter to the 2018 Rule 606 Amendments observed: ''With non-marketable limit orders, what matters is the skill of the broker in choosing the venue with the highest probability of filling the order. Measuring execution quality is difficult in that some limit orders are placed far away from the NBBO and are unlikely to be filled. Others are cancelled after varying lengths of time for any number of reasons. It may be difficult to tell whether a cancelled order would have been filled later had it not been cancelled.'' [296] In offering suggestions to modernize Rule 605, another commenter recommended including an additional ''away-from-the-quote'' bucket for NMLOs, which the commenter stated would capture a significantly greater number of self-directed orders from individual investors.[297]

The Commission recognizes that more meaningful measures of execution quality for NMLOs, as well as orders submitted with stop prices,[298] would assist investors in measuring execution quality. A large number of NMLOs are not captured because they are more than ten cents away from the NBBO or submitted outside of regular market hours.[299] The Commission believes that it would be informative to calculate execution quality statistics for those NMLOs and orders submitted with a stop price that become ''executable.'' [300] Because execution quality for orders placed further away from the quote depends heavily on prevailing market conditions,[301] adding the concept of ''executable'' allows execution quality statistics to be measured from a point where an order could be executed.[302]

As proposed, Rule 605 statistics would be collected for ''executable'' NMLOs. The Commission proposes the following definition of ''executable'' for NMLOs (other than orders submitted with stop prices): for any non-marketable buy order (excluding orders submitted with stop prices), executable means that the limit price is equal to or greater than the national best bid during regular trading hours, and, for any non-marketable sell order (excluding orders submitted with stop prices), that the limit price is equal to or less than the national best offer during regular trading hours.[303] This definition is designed to capture NMLOs (including beyond-the-midpoint limit orders) that, during their time in force, ''touched'' a price where they could have been executed. For example, if the market is $10.05 × $10.10, a limit order to buy at $10.02 would not be an executable NMLO unless the market moved to a price at which that limit order could be executed—for example, $10.02 × $10.06. As is the case for orders submitted with stop prices, incorporation of the ''executable'' concept would have two effects. First, NMLOs would only be reported as part of a Rule 605 report if they become executable during regular trading hours.[304] Because there are substantial differences in the nature of the market between regular trading hours and after-hours, this would provide a basis for more comparable execution quality measures. Second, the point that a NMLO first becomes executable would be used as an input for several execution quality metrics: average time to execution statistics,[305] average effective spread,[306] average percentage effective and realized spread,[307] and average effective over quoted spread.[308] The Commission is proposing to use the time an order first becomes executable rather than the time of order receipt in order to measure execution quality from a point in time when a liquidity-providing order is priced at or better than the quote. Including executable NMLOs within the scope of the Rule would help investors compare the performance of market centers and broker-dealers from a point in time when such orders could reasonably be expected to execute and provides a more informative measure of execution quality by controlling for market conditions.

(b) Beyond-the-Midpoint Limit Orders

Under current Rule 605, inside-the-quote limit orders are a separate order type category.[309] Because they are not a marketable order type (*i.e.,* they do not fully cross the spread),[310] current Rule 605 does not require price improvement statistics to be calculated for inside-the-quote limit orders.[311]

Limit orders priced more aggressively than the midpoint may have different execution quality statistics than other types of NMLOs because market centers and broker-dealers may treat beyond-the-midpoint limit orders as marketable limit orders in certain circumstances and as NMLOs in others. An analysis of a sample of orders executed by the six most active wholesalers for the period of Q1 2022 [312] shows that beyond-the-midpoint NMLOs executed by wholesalers tend to have much faster time-to-executions and higher fill rates than other types of inside-the-quote NMLOs, and are also somewhat more likely to be given price improvement, indicating wholesalers often treat limit orders priced more aggressively than the midpoint more like marketable limit orders and may offer price improvement to these orders.[313]

The Commission is proposing to label those limit orders priced more aggressively than the midpoint as ''beyond-the-midpoint limit orders.'' Because beyond-the-midpoint limit orders are a type of NMLO and could therefore be covered orders even if received outside of regular trading hours

[296] Angel Letter at 7. *See also* Blackrock Letter at 3 (stating in response to the Commission's Concept Release on Equity Market Structure that revised Rule 605 disclosures should provide greater transparency on NMLOs).

[297] *See* FIF III at 4.

[298] *See supra* section IV.A.2.

[299] An analysis of 80 stocks in March 2022 finds that away-from-the-quote orders (*i.e.,* NMLOs that are more than $0.10 away from the NBBO) represent 23.8% of non-marketable share volume). *See infra* section VII.C.2.(c)(1).

[300] As discussed above, the Commission is proposing to modify the definition of ''covered order'' to include NMLOs submitted outside of regular trading hours or when an NBBO is not being disseminated and orders submitted with a stop price. *See supra* sections IV.A.1 and IV.A.2.

[301] For example, even if a limit order is placed $0.05 away from the quote, if the market moves away and only 25 minutes later returns to a price level where the limit order executes, the time to execution for that order is less reflective of execution quality than of prevailing market conditions.

[302] As discussed above (*see supra* section IV.A.2.), the Commission also believes it would be helpful to investors to measure the execution quality of orders submitted with stop prices. Therefore, it is proposing to add a separate order type category of ''executable orders submitted with stop prices'' to the definition of ''categorized by order type.'' *See* proposed Rule 600(b)(20).

[303] *See* proposed Rule 600(b)(42). *See also supra* note 240 and accompanying text (discussing the definition of ''executable'' as it relates to orders submitted with stop prices).

[304] *See* proposed Rule 600(b)(20) (defining ''categorized by order type'' to include a category for ''*executable* non-marketable limit orders'') (emphasis added).

[305] *See infra* section IV.B.3.

[306] *See infra* section IV.B.4.(b).

[307] *See infra* section IV.B.4.(c).

[308] *See infra* section IV.B.4.(d).

[309] *See* 17 CFR 242.600(b)(14).

[310] *Cf. id.* (marketable limit orders separated from inside-the-quote limit orders).

[311] Rule 605(a)(1)(i) specifies execution quality statistics to be provided for all order types, and Rule 605(a)(1)(ii) specifies execution quality statistics to be provided for marketable order types. *See* 17 CFR 242.605(a)(1)(i) and (ii). For a discussion of the changes that the Commission is proposing to make to the execution quality statistics to be provided for all order types and for marketable order types, *see infra* sections IV.B.4 and IV.B.5, respectively. The Commission is also proposing to require additional execution quality statistics to be provided for non-marketable order types. *See infra* section IV.B.6.

[312] *See infra* note 689 and accompanying text; Table 5.

[313] *See infra* section VII.C.2.(c)(3).

or during a time when the NBBO is not being disseminated, the Commission is proposing to define a beyond-the-midpoint limit order with respect to orders received both when an NBBO is being disseminated and when it is not. If the NBBO is being disseminated, ''beyond-the-midpoint limit order'' would mean: (i) any non-marketable buy order with a limit price that is higher than the midpoint of the national best bid and national best offer at the time of order receipt, or (ii) any non-marketable sell order with a limit price that is lower than the midpoint of the national best bid and national best offer at the time of order receipt.[314] If the NBBO is not being disseminated, it would mean: (i) any non-marketable buy order with a limit price that is higher than the midpoint of the national best bid and national best offer at the time that the national best bid and national best offer is first disseminated after the time of order receipt, or (ii) any non-marketable sell order with a limit price that is lower than the midpoint of the national best bid and national best offer at the time that the national best bid and national best offer is first disseminated after the time of order receipt.[315]

In addition, the Commission proposes to require that the execution quality statistics for beyond-the-midpoint limit orders include the additional information required of both marketable[316] and non-marketable[317] order types. If beyond-the-midpoint orders instead were treated solely as a non-marketable order type, similar to inside-the-quote limit orders, then market centers and broker-dealers would not be required to provide the types of execution quality statistics specific to marketable orders for these orders. Because beyond-the-midpoint limit orders may participate in the proposed qualified auctions[318] or be treated as marketable orders in certain circumstances, it would be informative if reporting entities provided these types of statistics for these orders, especially given the increased likelihood that these types of orders may receive price improvement in certain circumstances.[319] However, because beyond-the-midpoint limit orders may execute more like inside-the-quote limit orders in other circumstances, the additional statistics required for the non-marketable order types would also be required to be reported for beyond-the-midpoint limit orders. This would facilitate comparisons of beyond-the-midpoint limit orders with other types of NMLOs. Therefore, the Commission proposes to add beyond-the-midpoint limit orders to both the list of marketable order categories and the list of non-marketable order categories for which those execution quality statistics are required, as provided in proposed Rules 605(a)(1)(ii) and 605(a)(1)(iii), respectively.

Unlike market, marketable limit, and marketable IOC orders, beyond-the-midpoint limit orders may be covered orders even if received outside of regular trading hours or when an NBBO is not being disseminated.[320] However, because beyond-the-midpoint limit orders are priced more aggressively than the midpoint of the NBBO when received, they are by definition executable from the time of order receipt unless submitted prior to market open or during a trading halt. In that case, they would be executable at the time the NBBO is first disseminated after the time of order receipt during regular trading hours. Therefore, the Commission proposes to modify the time to order execution statistics to state, with respect to beyond-the-midpoint limit orders, these time-based statistics should be measured from the time such orders become executable to the time of order execution.[321]

(c) Marketable IOCs

Rule 605 reports group marketable IOCs together with other marketable orders.[322] The Commission included IOC orders in the scope of the Rule, reasoning that IOC orders are functionally the same as orders that are submitted and cancelled almost immediately thereafter.[323]

The EMSAC, as well as commenters on the 2010 Equity Market Structure Concept Release and the 2018 Rule 606 Amendments, suggested separating IOCs within the categorization by order type.[324] While the Commission continues to believe that information regarding IOCs is useful to measure execution quality, marketable IOCs may have a different submitter profile (typically, institutional investors)[325] and different execution quality characteristics.[326] Analysis of Tick Size Pilot data indicates that IOCs typically have much lower fill rates than other market and marketable limit orders (on average 3.22% as compared to 15.94%), particularly with respect to larger-sized orders and orders received by wholesalers.[327] This data also shows that IOCs make up more than 90% of executed market and marketable share volume.[328] As a result, including them with other market and marketable limit orders may be skewing fill rates downwards, especially for larger-sized orders and orders handled by wholesalers.

To address this issue, the Commission proposes to assign marketable IOCs to a separate order type category so that they no longer would be commingled with other order types. Specifically, the Commission proposes to add a category for ''marketable immediate-or-cancel orders'' and indicate that the category for ''marketable limit orders'' excludes IOC orders.[329] Rule 605(a)(1)(i) and (ii) specify execution quality statistics required for enumerated categories of orders, including marketable limit orders. The Commission proposes to add marketable immediate-or-cancel orders to the enumerated order categories for those sets of execution quality statistics so that the Rule would continue to require the same information for marketable IOCs that is

[314] *See* proposed Rule 600(b)(16). *See also* proposed Rule 600(b)(20) (modifying the definition of ''categorization by order type'' to add beyond-the-midpoint limit orders to the list of order types).

[315] *See* proposed Rule 600(b)(16).

[316] *See* proposed Rule 605(a)(1)(ii) (specifying additional required information for market orders, marketable limit orders, marketable immediate-or-cancel orders, and beyond-the-midpoint limit orders).

[317] *See* proposed Rule 605(a)(1)(iii) (specifying additional required information for beyond-the-midpoint limit orders, executable non-marketable limit orders, and executable orders with stop prices).

[318] *See supra* section III.B.

[319] *See infra* note 689 and accompanying text; Table 5.

[320] The time-based execution quality statistics that would be required for marketable order types other than beyond-the-midpoint limit orders would be measured from the time of order receipt to the time of order execution. *See* proposed Rule 605(a)(1)(ii)(C), (D), (E), (G), (H), (I), (L), (M), and (N).

[321] *See* proposed Rule 605(a)(1)(ii)(C), (D), (E), (G), (H), (I), (L), (M), and (N).

[322] Rule 600(b)(14) defines ''categorized by order type'' and includes ''marketable limit orders'' within the listed categories of order types. *See* 17 CFR 242.600(b)(14).

[323] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75421.

[324] *See* IHS Markit Letter at 11; EMSAC III at 2; FIF I at 2.

[325] Analysis of CAT data of retail orders received at broker-dealers with 10,000 or more individual accounts during June 2021 indicates that approximately only 0.02% of retail orders are submitted with an IOC instruction. *See infra* note 722 and accompanying text.

[326] In offering recommendations to modernize Rule 605, a commenter who supported separating IOC orders within Rule 605 statistics stated that such orders have a different profile and can skew statistics. *See* FIF III at 5.

[327] *See infra* note 723 and accompanying text; Table 6. This analysis shows that wholesaler fill rates range between 60% to 90% for non-IOC orders, but are mostly below 30% for IOC orders, and even smaller with respect to larger order sizes. *See id.*

[328] *See infra* note 723 and accompanying text; Table 6.

[329] *See* proposed Rule 600(b)(20).

required for other marketable order types.[330]

Request for Comments

The Commission seeks comment on the proposed changes to the definition of ''categorized by order type.'' In particular, the Commission solicits comment on the following:

24. Should the proposed concept of executability be required to be used as a benchmark for NMLO and stop order statistics? Why or why not? Is another benchmark more appropriate, and if so why? Please explain and provide data, if available.

25. Should beyond-the-midpoint limit orders have different execution quality statistics than other types of NMLOs or marketable limit orders? Why or why not?

26. Should marketable IOCs be required to be broken out into a separate order type category? Why or why not? Do commenters agree that marketable IOCs may have a different submitter profile and different execution quality characteristics than market orders and marketable limit orders? Please explain.

3. Timestamp Conventions

Rule 605 reports are required to include information on the number of shares of covered orders executed within certain timeframes, measured by seconds after the time of order receipt.[331] Rule 600 definitions for ''time of order execution'' and ''time of order receipt'' require that time be measured ''to the second.'' [332] Further, the smallest time-to-execution category in current Rule 605 includes those covered orders executed from 0 to 9 seconds after the time of order receipt. The Commission proposes to update the timestamp conventions used for the time of order receipt [333] and time of order execution [334] definitions to require that such times be measured ''in increments of a millisecond or finer.'' The Commission also is proposing to specify that the average time-to-execution statistics currently required for marketable order types should be expressed in increments of a millisecond or finer.[335] Similarly, the proposed definition of ''executable'' provides that the time an order becomes executable ''shall be measured in increments of a millisecond or finer.'' [336] The equities markets now operate at much greater speeds than they did in 2000 when timestamps were adopted with second granularity. For example, an analysis of data from the SEC's MIDAS analytics tool shows that in Q1 2022 more than half (51.6%) of on-exchange NMLOs executed in less than one second in large market cap stocks.[337] Changes in technology have made more granular timestamp information more cost effective and practicable and timestamp information ''in increments of a millisecond or finer'' would result in more informative reports.

Numerous commenters have raised concerns about the Rule's timestamp conventions, especially given the increases in the speed of the market.[338] One commenter stated that current time bucketing is outdated and the Rule should provide average execution time for marketable orders, measured in milliseconds (or microseconds).[339] Another commenter suggested that Rule 605 should be re-written to include statistics at a granular number of milliseconds from order receipt time to either fill or cancel time.[340]

The proposed amendments would not require the use of reporting increments finer than milliseconds for reports generated under Rule 605. The CAT NMS Plan requires CAT reporters to report CAT data to the CAT in milliseconds and, to the extent a CAT reporter's order handling or execution systems utilize timestamps in increments finer than milliseconds, such CAT reporter is required to utilize such finer increments up to nanoseconds when reporting CAT data to the CAT.[341] CAT requires the use of such finer increments, when available, to assist in the accurate sequencing of reportable events on an order-by-order basis.[342] In contrast, the order and execution quality statistics under Rule 605 utilizing timestamp information are reported in the aggregate. Timestamp information in millisecond increments would allow for meaningful points of comparison between market centers or broker-dealers for both aggregate data that utilizes timestamp information and time-to-execution statistics such as average time to execution. There would be limited additional utility in requiring Rule 605 reporting using increments finer than a millisecond.

In conjunction with the proposed requirement to use the more granular timestamps, the Commission is proposing to eliminate the current time-to-execution buckets.[343] Average time to execution is already required to be reported for market orders and marketable limit orders,[344] and generally provides a more informative metric for those order types than the existing time-to-execution buckets given the speed with which those order types typically execute. The vast majority of market orders and marketable limit orders that execute are executed in less than a second,[345] an increment that results in almost all market and marketable limit orders being contained in the smallest of the existing time-to-execution buckets.[346] As a result, the existing time-to-execution buckets do not generally provide meaningful time-to-execution differentiation for market orders and marketable limit orders. The existing time-to-execution buckets only generally provide meaningful information for non-marketable order

[330] *See* proposed Rule 605(a)(i) and (ii). Additional information that is currently calculated for market and marketable limit orders (*e.g.,* price improvement statistics) would continue to be calculated for marketable IOCs.

[331] *See* 17 CFR 242.605(a)(1)(i)(F)–(J).

[332] *See* 17 CFR 242.600(b)(91) and (92). The Commission is proposing to renumber the definitions of ''time of order execution'' and ''time of order receipt'' as proposed Rule 600(b)(108) and (109), respectively.

[333] *See* proposed Rule 600(b)(109).

[334] *See* proposed Rule 600(b)(108).

[335] For shares executed with price improvement, executed at the quote, or executed outside the quote, respectively, *see* proposed Rules 605(a)(1)(ii)(C), 605(a)(1)(ii)(G), and 605(a)(1)(ii)(L). Current Rule 605 does not specify a level of granularity for the existing time-to-execution statistics. However, the Plan requires these fields to be expressed in number of seconds and carried out to one decimal place. *See* Rule 605 NMS Plan section VI.a(21), (23), and (26).

[336] Proposed Rule 600(b)(42). As discussed above, the Commission is also proposing to expand the scope of Rule 605 reporting to include certain NMLOs submitted outside of regular trading hours, specifically NMLOs that become executable during regular trading hours. *See supra* section IV.A.1.

[337] *See* dataset ''Conditional Cancel and Trade Distribution'' *available at https://www.sec.gov/marketstructure/downloads.html. See also infra* note 692 and accompanying text.

[338] *See, e.g.,* KOR Group I at 2, FIF I at 2.

[339] *See* FIF III, Appendix 1 at 4.

[340] *See* IHS Markit Letter at 26–27.

[341] *See* Securities and Exchange Commission File No. 4–698 (National Market System Plan Governing the Consolidated Audit Trail), section 6.8(b). *See also* Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016).

[342] *See* 17 CFR 242.613(d)(3) (requiring the use of timestamp increments finer than the minimum so that all reportable events ''can be accurately sequenced'').

[343] *See* 17 CFR 242.605(a)(1)(i)(F) through (J) (detailing time-to-execution buckets of 0 to 9 seconds, 10 to 29 seconds, 30 to 59 seconds, 60 to 299 seconds and 5 to 30 minutes after the time of order receipt).

[344] *See* 17 CFR 242.605(a)(1)(ii)(D), (F), and (I), requiring share-weighted average period from the time of order receipt to the time of order execution for shares executed with price improvement, at the quote, and outside the quote, respectively.

[345] Analysis of Tick Size Pilot data shows more than 95% of market and marketable limit orders that executed did so within 1 second. *See* analysis in *infra* Figure 12. *See also infra* section VII.E.3.(b)(1) (analyzing execution speeds of market and marketable limit orders, along with the three categories of NMLOs currently required in Rule 605 (inside-the-quote, at-the-quote, and near-the-quote)).

[346] *See* 17 CFR 242.605(a)(1)(i)(F) (requiring the reporting of the cumulative number of shares of covered orders executed from 0 to 9 seconds after the time of order receipt).

types. The Commission believes that requiring average time to execution for all order types, in addition to statistics that would provide information about the distribution of execution times within each order type, would provide more meaningful information because these statistics could be used to compare the average time to execution for a particular order type, while still providing information about the extent to which outlier values do or do not skew the average.

Although average time to execution is currently required for marketable order types,[347] the Commission believes it would be both feasible and useful to measure average time to execution for non-marketable order types from the point in time they become executable. As stated above, this would provide a control for prevailing market conditions and benchmark orders from a point when such orders could reasonably be expected to execute. Therefore, the proposal would require the share-weighted average time to execution for non-marketable order types, calculated from the time such orders become executable.[348]

Because orders may execute near-instantaneously or over a number of minutes, average time to execution within a category could be skewed by outlier values. Given this, information about the distribution of execution speeds in addition to the average would still be useful. However, the existing time-to-execution buckets are of limited utility, especially for the fastest executions, given that the smallest time-to-execution bucket encompasses all orders executed between zero and nine seconds. Although finer increments could be added below one second, it would still be important to retain information for those orders that take longer to execute. Rather than adding additional buckets to provide this distribution information, the Commission proposes requiring both share-weighted median and 99th percentile time-to-execution statistics in order to provide additional descriptive statistical information for executions of all covered order types.[349] These two measurements would provide additional information to allow users of the data to assess how quickly a market center or broker-dealer is able to execute incoming orders and better understand whether and to what extent the time to execution within a particular category is affected by outlier values.

For these reasons, the Commission proposes to require share-weighted median and 99th percentile time to execution for all order types. Average time to execution statistics for marketable order types (market orders, marketable limit orders, marketable IOCs, and beyond-the-midpoint limit orders) would be required for each of: shares executed with price improvement,[350] at the quote,[351] and outside the quote.[352] For the marketable order types, the Commission is similarly proposing to require: (i) the share-weighted median period from the time or order receipt to the time of order execution;[353] and (ii) the share-weighted 99th percentile period from the time of order receipt to order execution.[354] For non-marketable order types (beyond-the-midpoint limit orders, executable NMLOs, and executable orders with stop prices NMLOs), the Commission proposes to require, for executed orders: (i) the share-weighted average period from the time the order becomes executable to the time of order execution;[355] (ii) the share-weighted median period from the time the order becomes executable to the time of order execution;[356] and (iii) the share-weighted 99th percentile period from the time the order becomes executable to the time of order execution.[357]

The Commission considered compressing the current time-to-execution buckets to a sub-second level (*i.e.,* less than 50 milliseconds, 50–500 milliseconds, 500 milliseconds to 1 second, and greater than 1 second). One commenter suggested that even more granular timestamps be used.[358] The proposed rule would not require the use of microsecond timestamps, for the reasons discussed above. The Commission solicits comment below on whether requiring the use of timestamps more granular than a millisecond would be appropriate.

Request for Comment

The Commission seeks comment generally on the changes to the timestamp conventions within Rule 605. In particular, the Commission solicits comment on the following:

27. Should Rule 605 require timestamps to be recorded at millisecond level granularity? Why or why not? Would it be preferable in Rule 605 for timestamps to be recorded at microsecond granularity (as suggested by one commenter) or nanosecond granularity? Please explain and provide data, if available. Should Rule 605 require market centers and larger broker-dealers to utilize timestamps in increments finer than milliseconds to the extent such entities' order handling or execution systems utilize finer increments? Why or why not? Would allowing some market centers and broker-dealers to utilize timestamps in increments finer than milliseconds affect the comparability of their execution quality statistics?

28. Do commenters believe the proposed level of timestamp granularity would enhance the usefulness of execution quality statistics? Why or why not?

29. Do commenters believe that the proposed statistical measures that would be required for time to execution (*i.e.,* average, median, and 99th percentile) are appropriate? If not, what statistics should be used?

30. Should the Commission require share-weighted average time to execution for non-marketable order types, measured from the time the order becomes executable? Should the Commission require share-weighted median and 99th percentile time-to-execution statistics, measured from the time an order becomes executable?

31. Should the Commission retain the required time-to-execution buckets for all order types, with revisions to the time intervals used? If so, should the Commission use the time buckets proposed by a commenter (*i.e.,* less than

[347] *See* 17 CFR 242.605(a)(1)(ii)(D), (G), and (H) for shares executed with price improvement, executed at the quote, or executed outside the quote, respectively.

[348] *See* proposed Rule 605(a)(1)(iii)(C), (D), and (E).

[349] *See* proposed Rule 605(a)(1)(ii)(D), (E), (H), (I), (M), and (N), and proposed Rule 605(a)(1)(iii)(D) and (E), requiring share-weighted median and share-weighted 99th percentile time to execution information. These measures would represent the time at or below which 50 percent of executions occur, weighted by number of shares (in the case of the share-weighted median) and the time at or below which 99 percent of executions occur, weighted by number of shares (in the case of the share-weighted 99th percentile).

[350] *See* 17 CFR 242.605(a)(1)(ii)(C).

[351] *See* 17 CFR 242.605(a)(1)(ii)(G).

[352] *See* 17 CFR 242.605(a)(1)(ii)(L).

[353] For shares executed with price improvement, executed at the quote, or executed outside the quote, respectively, *see* proposed Rules 605(a)(1)(ii)(D), 605(a)(1)(ii)(H), and 605(a)(1)(ii)(M).

[354] For shares executed with price improvement, executed at the quote, or executed outside the quote, respectively, *see* proposed Rules 605(a)(1)(ii)(E), 605(a)(1)(ii)(I), and 605(a)(1)(ii)(N).

[355] *See* proposed Rule 605(a)(1)(iii)(C).

[356] *See* proposed Rule 605(a)(1)(iii)(D).

[357] *See* proposed Rule 605(a)(1)(iii)(E). As a result, the use of time-to-execution buckets would no longer be necessary. Rule 605(a)(1)(i)(F) through (J) requires statistics for the cumulative number of shares of covered orders executed in separate time-to-execution buckets. Those requirements would be eliminated.

[358] *See* Healthy Markets II at 3 (suggesting use of the following execution time categories: less than 500 microseconds; 500 microseconds–1 millisecond; 1–10 milliseconds; 10–100 milliseconds; 100 milliseconds–1 second; and current categories).

500 microseconds; 500 microseconds–1 millisecond; 1–10 milliseconds; 10–100 milliseconds; 100 milliseconds–1 second; in addition to the current categories)?

4. Changes to Information Required for All Types of Orders

(a) Realized Spread

Rule 605 requires calculation of average realized spread for executions of all covered orders and is calculated by comparing the execution price of an order and the midpoint of the NBBO as it stands five minutes after the time of order execution.[359] The smaller the average realized spread, the more prices have moved adversely to liquidity providers after the order was executed, which shrinks the spread ''realized'' by the liquidity providers.[360] A low average spread indicates that a liquidity provider was providing liquidity even though prices were moving against it.[361] In the Adopting Release, the Commission also stated that the realized spread statistic ''can highlight the extent to which market centers receive uninformed orders (as indicated by higher realized spreads than other market centers), thereby potentially helping to spur more vigorous competition to provide the best prices to these orders to the benefit of many retail investors.'' [362] To the extent realized spreads capture adverse selection costs faced by liquidity providers, they provide a measure of the potential profitability of trading for liquidity providers.[363]

In order to proxy for this, realized spread measures the difference between the execution price and a future price. An ideal measurement horizon would be one that aligns with the amount of time an average liquidity provider holds onto its inventory positions and must be sufficiently long so that it captures a price reversal rather than a series of trades representing the same demand as the initial trade but not so long as to introduce unnecessary noise.[364]

The equities market moves much faster than it did in 2000,[365] and correspondingly any changes in market maker or liquidity provider positions and inventory occur much more quickly in the contemporary market environment. There is academic literature that argues that the current five-minute horizon has become inappropriate for a high-frequency environment.[366] One study posits that the five-minute time horizon should be replaced with a horizon of no more than 15 seconds for large cap stocks and 60 seconds for small cap stocks.[367]

Selecting an appropriate time horizon to calculate the realized spread is important, as realized spreads vary significantly as the time horizon is changed.[368] In order to examine this issue, the Commission analyzed how realized spreads vary when calculated over time horizons ranging from one second to five minutes, as well as how they differ based on market capitalization size, using TAQ data from February 2021 for a sample of 400 stocks from four different market capitalization groups (less than $100 million, $100 million to $1 billion, $1 billion to $10 billion, and over $10 billion).[369]

The results are presented in Figure 1, and show that realized spreads tend to decrease as the time horizon increases, and additionally show that they tend to decline as market capitalization size increases. Echoing results from the academic literature, the persistence of these systematic differences in realized spreads across market capitalization sizes implies that a time horizon that may be ideal for large cap stocks may be too short for small cap stocks.[370] As a result, the Commission believes that including multiple different time horizons for realized spreads would make this measure more relevant across a wider range of stocks.

Figure 1: Average Realized Spreads by Market Capitalization, February 2021

[359] *See* 17 CFR 242.600(b)(9). For buy orders, realized spread is double the amount of difference between the execution price and the midpoint of the NBBO five minutes after the time of order execution. For sell orders, realized spread is double the amount of difference between the midpoint of the NBBO five minutes after the time of order execution and the execution price. *See id.* The Commission is proposing to renumber the definition of ''average realized spread'' as proposed Rule 600(b)(13).

[360] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75424.

[361] *See id.*

[362] *Id. See also* Securities Exchange Act Release No. 84875 (Dec. 19, 2018), 84 FR 5202, n.587 (Feb. 20, 2019) (''The realized spread is the portion of the spread that market makers 'realize' after adverse selection costs are taken into account.'').

[363] *See, e.g.,* Larry Harris, *Trading and Exchanges: Market Microstructure for Practitioners* (Oxford University Press 2003) at 286 (''Informed traders buy when they think that prices will rise and sell otherwise. If they are correct, they profit, and whoever is on the other side of their trade loses. When dealers trade with informed traders, prices tend to fall after the dealer buys and rise after the dealers sell. These price changes make it difficult for dealers to complete profitable round-trip trades. When dealers trade with informed traders, their realized spreads are often small or negative. Dealers therefore must be very careful when trading with traders they suspect are well informed.'')

[364] *See, e.g.,* Roger Huang & Hans Stoll, *Dealer Versus Auction Markets: A Paired Comparison of Execution Costs on NASDAQ and the NYSE,* 41 J. Fin. Econ. 313–357 (1996).

[365] *See supra* note 98.

[366] *See, e.g.,* Maureen O'Hara, *High Frequency Market Microstructure,* 116(2) J. Fin. Econ. 257–270 (2015) (''O'Hara 2015''); Maureen O'Hara, Gideon Saar, & Zhuo Zhong, *Relative Tick Size and the Trading Environment,* 9(1) Rev. of Asset Pricing Stud. 47–90 (2019) (''O'Hara et al.''); Jennifer S. Conrad & Sunil Wahal, *The Term Structure of Liquidity Provision,* 136(1) J. Fin. Econ. 239–259 (2020) (''Conrad and Wahal'').

[367] *See* Conrad and Wahal.

[368] *See infra* Figure 13.

[369] *See infra* note 706 for dataset description. This analysis uses data from prior to the implementation of the MDI Rules and the specific numbers may be different following the implementation of the MDI Rules. In particular, for certain stocks, the NBBO midpoint may change, though the Commission is uncertain of the direction of this effect. This may impact statistics that are based on these values, including realized spreads. *See infra* section VII.C.1.(d). While specific numbers might change, the Commission does not expect the relative variation in realized spreads across different time horizons to change as a result of the implementation of the MDI Rules.

[370] *See* Conrad and Wahal.

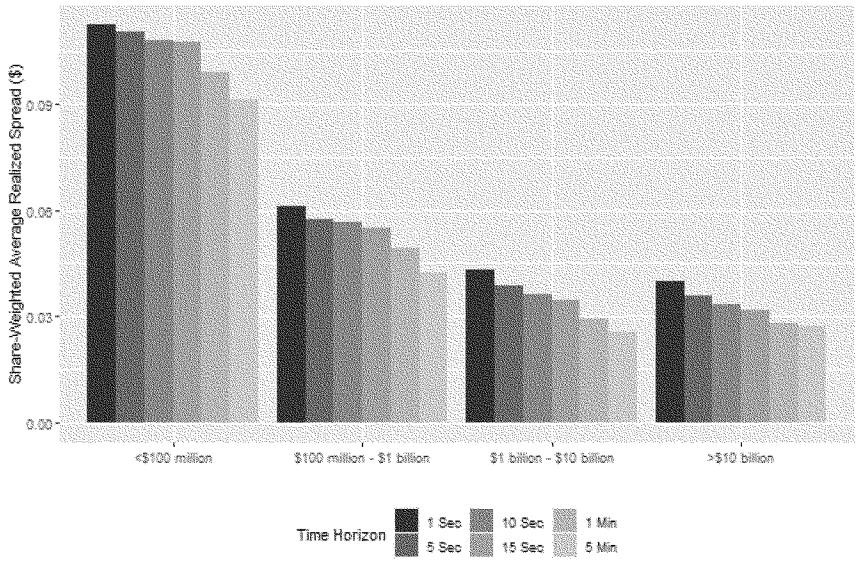

Figure 1: Average Realized Spreads by Market Capitalization, February 2021. This figure plots the share-weighted average realized spread using different time horizons, across four different market capitalization groups, using data from TAQ. See infra note 722 for dataset description. Measures grouped by size quartile were calculated on a stock-day basis, then averaged by stock, then averaged within each size quartile. This analysis uses data from prior to the implementation of the MDI Rules and numbers may be different following the implementation of the MDI Rules. See infra note 369 and infra section VII.C.1.d).

Further, the analysis of different time horizons and market capitalization shows that most of the difference in realized spread [371] is captured for the largest stocks at 15 seconds, but less than a third is captured for smaller cap stocks, as shown in Table 1 below.[372] However, at least half of the difference is captured for smaller cap stocks at one minute.[373] Therefore, the proposed time horizons of 15 seconds and one minute would capture most of the realized spread information, in particular for the largest stocks.[374]

TABLE 1—VARIATION IN AVERAGE REALIZED SPREAD, BY TIME HORIZON

Market cap group	1 sec–5 min ($)	Horizon		
		15 sec (%)	1 min (%)	5 min (%)
<$100 million	0.021	22.5	40.2	37.3
$100 million–$1 billion	0.019	33.2	29.7	37.1
$1 billion–$10 billion	0.017	48.5	30.5	21.0
>$10 billion	0.013	66.2	28.7	5.1

Table 1: Variation in Average Realized Spread, by Time Horizon. This table presents the difference between dollar realized spreads calculated using a 1-second time horizon and realized spreads calculated using a 5-minute time horizon, along with the percentage of variation in this difference that is captured at various time horizons (15 seconds, 1 minute, and 5 minutes), using data from TAQ. *See infra* note 722 for dataset description. This analysis uses data from prior to the implementation of the MDI Rules and numbers may be different following the implementation of the MDI Rules. *See supra* note 369 and *infra* section VII.C.1.(d).

Based on this analysis, for executions of covered orders, the Commission proposes that the average realized spread be calculated at specified intervals of 15 seconds and one minute after the time of execution.[375] The Commission believes that these timeframes are appropriate for liquid stocks and for thinly traded stocks because, as suggested by available academic literature and supported by the analysis in this release, realized spreads are likely to be most impacted during the first 15 seconds, for large stocks, and one minute, for small stocks, following a trade.[376] The Commission is proposing to require realized spreads to be calculated at both intervals in order

[371] Generally, if most of the difference between realized spreads is captured at a particular time horizon, then this implies that most of the relevant information has been incorporated into the realized spreads.

[372] Specifically, analysis shows the 15-second horizon captures over 66.2% of the overall decline in realized spreads for the group corresponding to the largest stocks, but captures less than a third of this decline in the two groups corresponding to smaller stocks. Analysis also shows that the 15-second horizon captures almost 50% of the overall decline in realized spreads for those stocks with a market capitalization of between $1 billion and $10 billion.

[373] By the one-minute horizon, realized spreads have captured more than 50% of the overall decline in realized spreads for all stocks, and a substantial majority for the two groups of larger stocks (79% and 94.9%).

[374] For the two smaller-stock groups, a sizeable proportion of the overall decline (37%) does not occur until the five-minute horizon. *See infra* section VII.E.3.(c)(1) for a discussion of including additional time horizons, including the five-minute horizon, for calculating realized spreads.

[375] *See* proposed Rule 605(a)(1)(i)(G) and(I). In order to accommodate calculation of ''average realized spread'' at two different time intervals, the Commission proposes to modify the existing definition of ''average realized spread'' to replace the reference to five minutes with a ''specified interval.'' *See* proposed Rule 600(b)(13).

[376] *See* Conrad and Wahal.

to provide relevant information for symbols with different liquidity characteristics. While commenters supported moving away from the current five-minute calculation, they suggested different time horizons.[377] Although both shorter (50ms, 100ms) and longer (three minute, five minute)[378] time horizons would provide useful information for certain groups of stocks, each additional time horizon adds to the computational burden of preparing the reports and increases the size and complexity of the reports, adding to the costs that market participants face when collecting, interpreting, and evaluating Rule 605 reports. Additional time horizons would likely only provide additional benefits for smaller subsets of stocks, while the 15-second and one minute time horizons would generally provide informative average realized spread metrics across the universe of stocks with different market capitalization and different liquidity characteristics.

Finally, in connection with both the average realized spread and average effective spread[379] statistics, the Commission has also considered, but is not including in the proposed rule text, an updated method by which the spread is calculated by incorporating a weighted midpoint.[380] However, as is discussed in section VII.E.3.(c)(3) below, the midpoint requires data only on the best available bid and ask price.[381] In contrast, calculating the weighted midpoint would require that reporting entities additionally collect data on the depth available at the NBBO.[382] Furthermore, the midpoint may be easier to compute and interpret, as it is more familiar to market participants than the weighted midpoint.

(b) Average Effective Spread

Rule 600(b)(8) defines ''average effective spread'' as the share-weighted average of effective spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the national best bid and national best offer at the time of order receipt and the execution price.[383] Currently, average effective spread is required to be calculated only for market and marketable limit order types and doing so requires the comparison of the execution price of an order with the midpoint of the NBBO at the time of order receipt. The Commission proposes to expand effective spread reporting requirements to include all covered orders, and to modify the methodology for calculating this metric for executable NMLOs, beyond-the-midpoint limit orders, and executable stop orders.

Average effective spread provides a measure of spread actually paid by investors at a particular market center.[384] Generally, for marketable order types, average effective spread provides a measure of the price paid for the immediacy of execution. However, because they are less aggressively priced, NMLOs are not typically submitted with the expectation that they will be executed immediately. Instead, they are submitted with the expectation that they rest and provide liquidity (if executed). Therefore, average effective spread for NMLOs and orders submitted with stop prices provides a measure of the amount a liquidity provider could expect to earn for providing liquidity. The Commission proposes to revise the definition of ''average effective spread'' to specify that, for order executions of NMLOs[385] and orders submitted with stop prices, average effective spread be calculated from the time the order becomes executable.[386] Because the concept of ''executable'' controls for prevailing market conditions, benchmarking average effective spread statistics for these non-marketable order types from the time such orders become executable would permit average effective spread statistics for these order types to be more informative of execution quality received.

The Commission proposes to prescribe the collection of this data point for executable NMLOs, beyond-the-midpoint limit orders, and executable stop orders by adding proposed Rule 605(a)(1)(i)(K) to require the calculation of average effective spread for executions of covered orders, which includes executable NMLOs and executable stop orders.[387]

(c) Percentage Spreads (Effective and Realized)

Currently, Rule 605 statistics include the average realized spread and average effective spread for executions of covered orders. To compare these dollar-based statistics across the data population while taking into account the wide range of stock prices, dollar-based statistics need to be converted into percentages. While obtaining historical price information for individual securities is possible, in the Commission's experience since the implementation of Rule 605, such calculations are time- and resource-intensive, especially across multiple time periods and securities. Furthermore, the Commission believes that using percentage-based spread measures could provide additional information at the individual stock level if a stock's price changes significantly during a month.

Therefore, the Commission proposes requiring dollar-based spread statistics (*i.e.,* effective spread and realized spread) to also be reported as percentages because a percentage measure would account for differing underlying stock prices and better facilitate comparisons of spread statistics across different time periods and securities.[388] The proposed definitions for ''average percentage effective spread'' and ''average percentage realized spread'' would provide the same calculation as the dollar-based effective and realized spread statistics for the numerator.[389]

[377] Two commenters suggested expanding realized spread into 50ms, 100ms, and three minute buckets to better identify adverse selection. *See* KOR Group I at 4; Healthy Markets II at 3. One commenter suggested that if the realized spread statistic is to remain, the Commission should either determine an appropriate time-scale for the measurement or re-affirm the current five minutes duration. *See* FIF III at 10.

[378] Analysis shows that retaining a five-minute horizon, in addition to the proposed one-minute and 15-second horizon, would capture additional information about realized spreads, particular for the smallest stocks. *See infra* section VII.D.1.(b)(1)(c)(ii). However, as stated above, the one-minute time horizon would still capture more than 50% of the variation in realized spreads for the smallest cap stocks. *See supra* note 373.

[379] *See infra* section IV.B.4.b).

[380] The weighted midpoint is calculated using the following formula: weighted midpoint = ((bid price × quantity at the ask price) + (ask price × quantity at the bid price))/(quantity at the ask price + quantity at the bid price). *See, e.g.,* Björn Hagströmer, *Bias in the Effective Bid-Ask Spread,* 142(1) J. Fin. Econ. 314–337 (2021).

[381] *See infra* section VII.E.3.(c)(3).

[382] This might not be a significant additional cost, as reporting entities would be required to collect information on NBBO depth for computing the size improvement benchmark measure under the proposed amendments. *See infra* section IV.B.4.(e).

[383] *See* 17 CFR 242.600(b)(8). All orders that require reference to a consolidated BBO that has been crossed for 30 seconds or more are exempt. *See* Letter from Annette L. Nazareth, Director, Division, Commission, to Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association (Mar. 12, 2001) (''SIA Exemption Letter'').

[384] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75415.

[385] As noted above, beyond-the-midpoint limit orders are a type of NMLO.

[386] *See* proposed Rule 600(b)(10).

[387] *See* proposed Rule 605(a)(1)(i). The Commission also proposes to delete the current average effective spread calculation requirement in Rule 605(a)(1)(ii)(A), which previously applied only to market and marketable limit orders, because this measurement, with the inclusion of marketable IOCs, beyond-the-midpoint limit orders, executable NMLOs, and executable orders with stop prices, would be included in proposed Rule 605(a)(1)(i)(K).

[388] *See* proposed Rule 605(a)(1)(i)(H), (J), and (L).

[389] *See* proposed Rule 600(b)(11) and (12).

The denominator for dollar-based spread percentages would be the midpoint of the NBBO at either the time of order receipt (for marketable order types) or the time an order first becomes executable (for non-marketable order types) in order to provide a consistent measure of the prevailing stock price from the point when an order could reasonably be expected to execute. This would then be averaged on a share-weighted basis for the month.

Specifically, average percentage effective spread would be calculated for each transaction as double the amount of the difference between the execution price and the midpoint divided by the midpoint. The midpoint used would be at either the time of order receipt [390] or the time of executability.[391] Then the percentage would be averaged on a share-weighted basis.[392]

Similarly, average percentage realized spread would be calculated as the realized spread for an order, divided by the midpoint of the NBBO at the time of order receipt (for marketable order types) or executability (for non-marketable order types).[393] For each buy transaction, realized spread would be double the amount of difference between the execution price and the midpoint of the NBBO at both 15 seconds and one minute after the time of order execution.[394] For each sell transaction, realized spread would be double the amount of difference between the midpoint of the NBBO at both 15 seconds and one minute after the time of order execution and the execution price.[395] Then the percentage would be averaged on a share-weighted basis for the month to calculate that month's average 15-second and one-minute realized spread percentage for each category.

(d) Effective Over Quoted Spread (E/Q)

The Commission understands that market participants often use effective over quoted spread (''E/Q'') [396] as a measure of execution quality.[397] E/Q is generally expressed as a percentage that represents how much price improvement an order received.[398] An E/Q of 100% means a buy order was executed at the national best offer or a sell order was executed at the national best bid. An E/Q of 0% means an order was executed at the midpoint of the NBBO.

Rule 605 does not require quoted spreads to be reported, although average quoted spread can be derived from existing Rule 605 statistics.[399] However, along with the proposed requirement to include percentage-based realized and effective spread statistics, it would improve the comparability of price improvement statistics across symbols to include share-weighted average E/Q. Further, the Commission understands E/Q is already often-used and well-understood by industry participants. Currently, although average E/Q can be derived under Rule 605, E/Q is a relatively simple metric to capture contemporaneously with an execution. Given the common usage of the metric, requiring a separate field for E/Q would increase the ability of market participants to access and utilize E/Q to compare price improvement statistics across securities, and across market centers and broker-dealers.

Deriving average quoted spread from the existing reports involves additional computational burdens. Further, there are likely to be differences in E/Q on a per transaction basis that may yield a different average E/Q than extrapolating an average quoted spread for the month and using that to calculate an average monthly E/Q, which is a noisier measure of E/Q.[400] Therefore, the Commission proposes to require, for executions of all covered orders, a statistic for the average effective over quoted spread, expressed as a percentage.[401] Share-weighted average E/Q would be calculated by dividing effective spread by quoted spread[402] for *each* transaction and then averaging that over the month (weighted by number of shares). The quoted spread would be the difference between the national best bid and the national best offer at either the time of order receipt (for marketable order types) or the time an order first becomes executable (for non-marketable order types).[403] This would provide a consistent measure of the prevailing quoted spread at the point when an order could reasonably be expected to execute. Expressing share-weighted average E/Q as a percentage would provide an additional data point that could be used to evaluate price improvement across symbols or the entire data population.

(e) Size Improvement

Rule 605 reports are required to include price improvement metrics but do not indicate whether orders received an execution of more than the displayed size at the quote. The Commission considered whether to add a measure of ''size improvement'' or ''liquidity enhancement'' when adopting Rule 605, but did not add this type of measure in part to minimize the complexity and quantity of statistics, and in part because certain measures, such as effective spread, already reflected a market center's ability to execute above the displayed size.[404] Share-weighted effective spread metrics may provide information about size improvement, since effective spread will be larger for orders that have to ''walk the book'' (*i.e.,* consume available depth beyond the best quotes). However, effective spread combines both price and size information; therefore, it is difficult to distinguish whether, for example, a low effective spread arises because the market center consistently offered better prices to small orders, or was able to offer better prices to several very large orders. Market participants have expressed support for a size improvement measure,[405] and orders are

[390] The time of order receipt would be used for market orders, marketable limit orders, and marketable IOCs. *See* proposed Rule 600(b)(11).

[391] The time an order becomes executable would be used for NMLOs, beyond-the-midpoint limit orders, and orders submitted with stop prices. *See* proposed Rule 600(b)(11).

[392] *See* proposed Rule 600(b)(11).

[393] *See* proposed Rule 600(b)(12).

[394] Proposed Rule 600(b)(12) provides that the midpoint would be calculated at a ''specified interval'' after the time of order execution. Proposed Rule 605(a)(1)(i)(H) and (J) would require average percentage realized spread to be calculated at 15 seconds and one minute, respectively, after the time of execution. The Commission is proposing the use of the 15 second and one minute time period for the reasons discussed in *supra* section IV.B.4.(a).

[395] *See* proposed Rule 600(b)(12) and proposed Rule 605(a)(1)(i)(G) and (I).

[396] Quoted spread is the difference between the national best bid and the national best offer at the time an order is received.

[397] *See, e.g.,* Bill Alpert ''Who Makes Money on Your Stock Trades,'' Barron's, Feb. 28, 2015 (retrieved from Factiva database) (stating ''the industry's acid-test [execution] quality measure is the ratio of effective spread over the quoted spread, or E/Q''); *https://investor.vanguard.com/about-us/brokerage-order-execution-quality#:~:text=Effective%20over%20quoted%20spread*,in%20our%20low%20E%2F.* A commenter stated that E/Q is a commonly used metric of execution quality that measures how effectively a market maker prices a customer's order relative to the prevailing NBBO. *See* Citi Letter at 3.

[398] *See, e.g., https://us.etrade.com/trade/execution-quality#:~:text=Effective%20spread%20over%20quoted%20spread,between%20the%20bid%20and%20offer.*

[399] Average quoted spread can be derived on a per symbol basis by adding average effective spread and double the amount of total average per share price improvement or dis-improvement (*i.e.,* amount of price improvement times price improved share count, less amount of price dis-improvement times price dis-improved share count, divided by total number of executed shares).

[400] *See infra* note 878 and accompanying text.

[401] *See* proposed Rule 605(a)(1)(i)(M).

[402] *See* proposed Rule 600(b)(9) (defining ''average effective over quoted spread'').

[403] *See id.*

[404] *See* Adopting Release, 65 FR at 75425.

[405] *See, e.g.,* FIF III, at 2; Virtu Petition at 3–4. The petitioner states that the ''single biggest shortcoming'' of Rule 605 is that it does not reflect

Continued

often larger than the displayed size at the NBBO.[406] The Commission also stated in the MDI Adopting Release that the decimalization of securities pricing in 2001, and the resulting shift away from the larger fractional quoting and trading increments, had significant implications for the amount of liquidity available at the top of book.[407] Market participants have raised concerns about reduced price transparency and difficulty executing large transactions at the best prices due to lower concentrations of trading interest at the top of book.[408] The Commission believes that the use of size improvement statistics could help address these concerns by providing users of the statistics with information relating to which market centers and broker-dealers are more likely to be able to fill larger-sized orders at or better than the NBBO.

The Commission proposes adding a benchmark metric that would, in combination with information about execution sizes, indicate the level of size improvement, *i.e.,* whether orders received an execution greater than the displayed size at the quote. Analysis of a sample of 100 symbols during March of 2019 indicates only a moderate level of correlation between standard price improvement metrics and a measure of size improvement, indicating that these measures may contain different information about execution quality.[409] Given that existing execution quality metrics do not include metrics for size improvement, nor any metrics that serve as an adequate proxy for a size improvement statistic, the Commission proposes to include a benchmark metric for all executions of covered orders. Specifically, proposed Rule 605(a)(1)(i)(F) requires, for executions of all covered orders, the reporting of the cumulative number of shares of the full displayed size of the protected bid at the time of execution, in the case of a market or limit order to sell; and for the full displayed size of the protected offer at the time of execution, in the case of a market or limit order to buy. This would capture the full displayed size at the quote on the side of the NBBO against which a buy or sell order would be expected to execute. Pursuant to the proposed rule, for each order, the share count shall be capped at the order size if the full displayed size of the national best bid or national best offer is larger than the order. This would prevent skewing of the size improvement benchmark if the national best bid or national best offer outsized any particular order. By limiting this measure to only the full displayed size of the protected bid or offer that would have been available to a particular order, the benchmark would represent what could be have been executed at the protected bid or offer.

This benchmark metric can be combined with information about the number of shares that a market center or broker-dealer executed at or above the quote to measure a market center or broker-dealer's ability to offer customers execution at the quote (or better), even when an order's full size at the quote is not available. For example, if a market center executes a 500 share order to buy at a price at or better than the national best offer, and there are currently 200 shares displayed at the national best offer, the associated benchmark metric for the order would be 200 shares because there were only 200 shares available to fill the order at the best displayed quote. This benchmark share count could then be compared to the number of shares executed at the best displayed quote (in this case, 500 shares) to capture whether the market center filled any part of the customer order at the national best offer (or better), even when there was no depth available at the national best offer (''size improvement share count''). To continue the preceding example, the size improvement share count would be $500 - 200 = 300$ shares, since the market center was able to offer the best displayed quote to 300 shares more than the depth available at the best-displayed quote.[410]

The petitioner suggested an alternative metric: real price improvement (''RPI''), which combines price improvement (*i.e.,* trades at prices better than the NBBO price) and size improvement (*i.e.,* transactions executed for share quantities greater than shares displayed at the NBBO and at prices at or better than the NBBO price).[411] The petitioner stated that RPI reflects the true benefits received by retail investors.[412] RPI would use as its benchmark a price that ''reflects the equivalent size of shares—including depth of book quotes and odd lot quotes.''[413] Because the calculation of RPI takes into account the complete set of information related to the consolidated depth of book, RPI may be a more informative measure of size improvement than a measure that can be calculated using the size improvement benchmark metric proposed. However, because the complete set of consolidated depth of book information is not available from public data sources, the RPI would require market centers and reporting broker-dealers to subscribe to all exchanges' proprietary depth-of-book data feeds, which would entail a significant cost for those reporting entities that do not already subscribe to these feeds.[414] The

any benefits received by retail investors on orders that outsize the NBBO, including size improvement. *See* Virtu Petition at 3. The petitioner states that retail investors deserve more complete execution quality reports that provides transparency about the amount of size improvement that their orders are receiving. *See id.* at 4. The petitioner specifically states that Rule 605 reporting would be more complete if market participants could assess execution quality by comparing the fill prices on their orders to a reference benchmark that includes all displayed liquidity on exchanges, including resting odd-lots that are visible in market data feeds. *See id.*

[406] For example, the petitioner stated that ''approximately 45% of shares (and 54% of the value traded) filled by [the petitioner] in 2020 were from orders that outsized the NBBO.'' Virtu Petition at 3.

[407] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18606.

[408] *See id.* at 16751 n.278 and accompanying text (citing the Investment Company Institute letter describing the difficulty of institutional investors' ability to execute large orders). Shortly after decimalization became a reality, the GAO noted that the average executed trades size declined by 67% on NYSE and 41% on NASDAQ. *See* GAO Report, ''Decimal Pricing Has Contributed to Lower Trading Cost and a More Challenging Trading Environment,'' May 2005, at 37.

[409] *See infra* section VII.E.3.(d)(1). *See infra* notes 882–883 for a description of the sample selection and analysis.

[410] Note that capping the benchmark metric at the order size prevents the size improvement share count from turning negative in situations when depth at the best displayed quote exceeds the customer-requested order size. For example, consider a case in which a market center executes an order for 200 shares when there are currently 500 shares displayed at the national best offer. If the benchmark share count were not capped at the order size, the size improvement share count would be $200 - 500 = -300$ and would become more negative the more depth there is available at the NBBO, which would reduce a market center's total monthly size improvement share count, simply for fulfilling the customer's request to only execute 200 shares and not the full 500 shares that were available at the national best offer. Instead, the benchmark share count would be capped at the order size, and the benchmark share count would still be 200 shares. The size improvement share count would be $200 - 200 = 0$ shares, capturing the fact that the market center did not offer the national best offer price (or better) to any shares over and above the depth available at the best displayed quote.

[411] *See* Virtu Petition at 3.

[412] *See id.* Additionally, the EMSAC suggested a similar measure—Enhanced Liquidity—designed to indicate for the proportion of shares greater than the available shares displayed at NBBO that were executed at or better than the NBBO. *See* EMSAC III at 2, n.3 and accompanying text.

[413] Virtu Petition at 5.

[414] In a white paper, one market center estimated its costs related to subscribing to depth of book data feeds for 11 exchanges to be between $51,480 and $226,320 per exchange per year. *See* IEX, Jan. 2019, ''The Cost Of Exchange Services,'' *available at https://iextrading.com/docs/The%20Cost%20of%20Exchange%20Services.pdf.*

proposed rule would not require an RPI benchmark or measure, as the Commission preliminarily believes the benefits to market participants from having access to a potentially more accurate measure of size improvement are not justified by these potentially significant additional costs to reporting entities.[415]

(f) Riskless Principal

In effecting riskless principal transactions, a market center submits a principal order to another market center in order to fulfill a customer order. Upon execution at the away market center, the receiving market center executes the customer transaction on the same terms as the principal execution.[416] Generally, under the current Rule, a market center that executes the riskless principal leg of the trade (*i.e.,* the receiving market center's execution of the customer order on the same terms as the principal transaction) reports those orders in its Rule 605 statistics as part of the cumulative number of shares of covered orders that were executed at the receiving market center under Rule 605(a)(1)(i)(D), rather than as a part of the cumulative number of shares of covered orders executed at any other venue under Rule 605(a)(1)(i)(E).[417] However, because the away market center is also reporting execution of the principal order as part of its shares executed at the receiving market center, this results in both of these legs of the transaction being counted as executed at the receiving market center, which could obscure information about how often a market center internalizes orders. Wholesalers may choose between internalizing orders or executing orders on a riskless principal basis. This choice has an effect on execution quality because internalized orders are not exposed to competition, whereas the principal order associated with a riskless principal transaction may be exposed to trading interest from other market participants. Therefore, it would be useful for investors to be able to observe what percentage of orders a wholesaler internalizes.

Accordingly, Rule 605's execution quality statistics would be more informative to market participants and other users of the Rule 605 reports if riskless principal orders were reported as executed at another venue, rather than as executed at the market center. The Commission proposes to carve riskless principal orders out from proposed Rule 605(a)(1)(i)(D) by providing that the number of shares of covered orders executed at the receiving market center, broker, or dealer excludes shares that the market center, broker, or dealer executes on a riskless principal basis.[418] As a result, the market center that executes the riskless principal order would include these shares as part of the cumulative number of shares executed at any other venue under Rule 605(a)(1)(i)(E), and only the market center that executes the corresponding principal order would include those shares as part of the cumulative number of shares executed at the receiving market center under proposed Rule 605(a)(1)(i)(D).

Request for Comment

The Commission seeks comment generally on the changes to the information required for all order types, including the calculation of average realized spread for executed orders, the calculation of average effective spread for NMLOs, percentage-based spread statistics, E/Q statistics, size improvement measures, and the treatment of riskless principal transactions. In particular, the Commission solicits comment on the following:

32. Should realized spread be required to be calculated 15 seconds and one minute after execution? Why or why not? If not, what alternative interval(s) do commenters recommend and why? Please explain and provide data, if available.

33. Some academic research suggests that the use of a weighted midpoint would be more appropriate when calculating realized and effective spreads.[419] Do commenters believe a weighted midpoint would be more appropriate? If so, why? Would additional costs be associated with utilizing a weighted midpoint?

34. Should average effective spread be required to be calculated for NMLOs and orders submitted with stop prices? Do commenters agree with the proposed average effective spread calculation methodology that would be required for executable NMLOs and executable stop loss orders?

35. Should dollar-based spread statistics (*i.e.,* effective and realized spread) also be required to be reported as a percentage? Do commenters believe there are other ways to represent spread statistics that could be helpful? If so, how should spread statistics also be reported?

36. Should share-weighted average E/Q expressed as a percentage be required to be calculated for all order types? Do commenters agree that share-weighted average E/Q expressed as a percentage would improve the comparability of price improvement statistics across symbols? If not, why?

37. With respect to proposed Rule 605(a)(1)(i)(F), do commenters support adding a requirement to include the proposed metric designed to, in combination with execution metrics, indicate whether orders received an execution greater than the displayed size at the quote (*i.e.,* size improvement)? Why or why not?

38. The Commission seeks comment on whether the addition of the proposed metric for size improvement would be sufficient to indicate whether orders received an execution greater than the displayed size of the quote. Should the Commission require a comparison of fill prices to a reference benchmark that includes depth of book and odd-lot information (*i.e.,* RPI), or some other liquidity measurement?[420] If so, why?

39. Should riskless principal orders not be required to be counted as orders executed at the receiving market center, broker, or dealer for the purpose of computing Rule 605 statistics and instead be classified as orders executed away? Why or why not?

5. Additional Required Information for Market, Marketable Limit, Marketable IOC, and Beyond-the-Midpoint Limit Orders

The MDI Rules expanded the data that will be made available for dissemination within the national market system (''NMS data'').[421] One goal of the expansion of NMS data is to increase transparency about the best-priced quotations available in the market. To further increase transparency about the

[415] *See also infra* section VII.E.3.(d)(1) for a more detailed discussion of the potential benefits and costs of RPI.

[416] *See* Securities Exchange Act Release No. 47364 (Feb. 13, 2003), 68 FR 8686, n. 33 (Feb. 24, 2003) (generally describing riskless principal transactions ''as trades in which, after receiving an order to buy (or sell) from a customer, the broker-dealer purchases (or sells) the security from (or to) another person in a contemporaneous offsetting transaction'').

[417] We note that Commission staff has taken the position that the market center executing an order as riskless principal should reflect the order on its monthly report as executed at such market center, and not at another venue, using the time that the order was executed at such market center. *See* Staff Legal Bulletin No. 12R, ''Frequently Asked Questions About Rule 11Ac1–5'' (June 22, 2001).

[418] *See* proposed Rule 605(a)(1)(i)(D).

[419] *See supra* note 380.

[420] As is noted above, the petitioner specifically states that Rule 605 reporting would be more complete if market participants could assess execution quality by comparing the fill prices on their orders to a reference benchmark that includes all displayed liquidity on exchanges, including resting odd-lots that are visible in market data feeds. *See* Virtu Petition at 4.

[421] *See* MDI Adopting Release.

availability of the best priced odd-lot orders in the market, the Commission also included certain odd-lot information in NMS data as part of the MDI Rules.[422] The Commission is proposing to add a definition for ''best available displayed price,'' which would include the best priced odd-lot if that price is inside the NBBO in order to provide additional price improvement statistics.[423]

Odd-lot information is defined as (1) odd-lot transaction data disseminated pursuant to the effective national market system plan or plans required under 17 CFR 242.603(b) as of April 9, 2021,[424] 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.[425] The Commission stated that making the best priced quotations available in core data is consistent with the Commission's goal in expanding the content of NMS information—enhancing the availability and usefulness of the information.[426]

The Commission is proposing to add a definition for ''best available displayed price'' which shall mean, with respect to an order to buy, the lower of (i) the national best offer at the time of order receipt or (ii) the price of the best odd-lot order to sell at the time of order receipt as disseminated pursuant to an effective transaction reporting plan or effective national market system plan; and, with respect to an order to sell, the higher of (i) the national best bid at the time of order receipt or (ii) the price of the best odd-lot order to buy at the time of order receipt as disseminated pursuant to an effective transaction reporting plan or effective national market system plan.[427] In each case, an order to buy or an order to sell would be benchmarked against the best price on the side of the market against which it could expect to receive an immediate execution. Because a beyond-the-midpoint limit order may be a covered order even if received outside of regular trading hours or when an NBBO is not being disseminated, the Commission proposes to specify that, for beyond-the-midpoint limit orders, the best available displayed price shall be determined at the time such order becomes executable instead of the time of order receipt.[428] Generally, the time of order receipt and the time the order is considered executable would be the same for a beyond-the-midpoint-limit order, except in those cases where it is received outside of regular trading hours or when an NBBO is not being disseminated. Therefore, measuring from the point of executability would ensure that a best available displayed price can be determined.

The Commission is further proposing to add two definitions relating to the best available displayed price in order to add price improvement statistics. ''Executed outside the best available displayed price'' shall mean, for buy orders, execution at a price higher than best available displayed price; and, for sell orders, execution at a price lower than the best available displayed price.[429] ''Executed with price improvement relative to the best available displayed price'' shall mean, for buy orders, execution at a price lower than the best available displayed price and, for sell orders, execution at a price higher than the best available displayed price.[430] Similar to the existing definitions for ''executed outside the quote'' [431] and ''executed with price improvement,'' [432] these definitions would classify order executions based on their execution price relative to the best available displayed price.

The Commission also proposes to add to Rule 605(a)(1)(ii) additional price improvement statistics specifically related to the best available displayed price. These statistics mirror the existing price improvement statistics for marketable order types executed better than, at, and outside the quote. Specifically, for each category, these additional price improvement statistics would provide a cumulative share count and a share-weighted average amount per share that prices were improved as compared to the best available displayed price. The Commission is proposing Rule 605(a)(1)(ii)(O), which would require the reporting of the cumulative number of shares of covered orders executed with price improvement relative to the best available displayed price. Proposed Rule 605(a)(1)(ii)(P) would require, for shares executed with price improvement relative to the best available displayed price, the share-weighted average amount per share that prices were improved as compared to the best available displayed price. Proposed Rule 605(a)(1)(ii)(Q) would require the reporting of the cumulative number of shares of covered orders executed at the best available displayed price. Proposed Rule 605(a)(1)(ii)(R) would require the reporting of the cumulative number of shares of covered orders executed outside the best available displayed price. Finally, proposed Rule 605(a)(1)(ii)(S) would require, for shares executed outside the best available displayed price, the share-weighted average amount per share that prices were outside the best available displayed price. These five metrics, in conjunction with each other, would allow market participants to evaluate how well market centers and broker-dealers perform in executing covered orders relative to the best available displayed price.

The Commission outlined a phased transition plan for the implementation of the MDI Rules, including the implementation of odd-lot order information.[433] The Commission stated that competing consolidators could offer a product that contains only information on the best priced odd-lot on each exchange.[434] The Commission is separately proposing to, among other things: (1) accelerate the implementation of the round lot and the odd-lot information definitions; and (2) amend the definition of odd-lot

[422] *See* 17 CFR 242.600(b)(59); MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18613. The Commission outlined a phased transition plan for the implementation of the MDI Rules, including the implementation of odd-lot order information. *See* MDI Adopting Release, 86 FR at 18698–701.

[423] The Commission is separately proposing to, among other things, amend the definition of odd-lot information to include a new data element to identify the best odd-lot orders available in the market inside the NBBO. *See* Minimum Pricing Increments Proposal. The Commission encourages commenters to review that proposal to determine whether it might affect their comments on this proposing release.

[424] 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).

[425] *See* 17 CFR 242.600(b)(59); MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18613. The Commission is separately proposing to, among other things, accelerate the implementation of the round lot and the odd-lot information definitions. *See* Minimum Pricing Increments Proposal.

[426] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18613.

[427] *See* proposed Rule 600(b)(14). Because the best odd-lot order to buy or sell would be inside the NBBO, the national best bid or national best offer would only be used if there is not a best odd-lot price on the same side of the market as the order.

[428] *See id.*

[429] *See* proposed Rule 600(b)(44).

[430] *See* proposed Rule 600(b)(47).

[431] *See* 17 CFR 242.600(b)(35). The Commission is proposing to renumber the definition of ''executed outside the quote'' as proposed Rule 600(b)(45).

[432] *See* 17 CFR 242.600(b)(36). The Commission is proposing to renumber the definition of ''executed with price improvement'' as proposed Rule 600(b)(46).

[433] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18698–701.

[434] *See id.* at 18753.

information to include a new data element to identify the best odd-lot orders available in the market inside the NBBO.[435]

As is discussed above[436] and in the MDI Adopting Release, orders currently defined as odd-lots often reflect superior pricing.[437] A recent academic working paper shows that odd-lots offer better prices than the NBBO 18% of the time for bids and 16% of the time for offers.[438] The Commission believes it would be beneficial to require price improvement statistics relative to the best available displayed price for marketable order types (*i.e.,* market, marketable limit, marketable IOC, and beyond-the-midpoint limit orders). In some cases, this may be equal to the national best bid or national best offer. However, in some cases, the best price available may be reflected in an odd-lot price. Under the current 605 reporting requirements, an order executed inside the NBBO would be an order executed with price improvement. Currently, there is no way for market participants to evaluate the performance of broker-dealers and market centers relative to the *best* inside the NBBO odd-lot when such better-priced orders are present. The Commission believes requiring price improvement statistics relative to the best available displayed price in the market, whether that is the NBBO or the best odd-lot order to buy or sell, would enhance the ability of market participants to evaluate order performance.

Request for Comment

The Commission seeks comment generally on changes to information required for market, marketable limit, marketable IOC, and beyond-the-midpoint limit orders, including time-to-execution statistics and price improvement statistics relative to the best available displayed price. In particular, the Commission solicits comment on the following:

40. Do commenters agree with the proposed definition of ''best available displayed price''? Do commenters believe this definition would be helpful in the calculation of the price improvement statistics? Why or why not?

41. Should the execution quality statistics be required to include price improvement relative to the best available displayed price? Why or why not? What additional statistics would be beneficial?

42. If odd-lot price information is not disseminated pursuant to an effective transaction reporting plan, what do commenters believe would be a viable substitute for a best odd-lot price for purposes of calculating price improvement statistics relative to the best available displayed price? Would use of substitute data provide a sufficiently standardized benchmark? Please explain.

6. Additional Required Information for Executable NMLOs, Executable Stop Orders, and Beyond-the-Midpoint Limit Orders

As discussed above,[439] the Commission recognizes the need for more meaningful measures of execution quality for NMLOs and orders submitted with stop prices.

First, proposed Rule 605(a)(1)(iii)(A) would require the reporting of the number of orders that received either a complete or partial fill. Although the cumulative number of shares executed is required to be reported for all order types,[440] the Commission believes the number of orders filled would provide important additional information about the nature of a market center or broker-dealer's NMLO and stop order executions—*e.g.,* whether a high executed cumulative share count represents, on average, larger execution sizes or a higher count of orders receiving executions.

Second, the Commission is proposing Rule 605(a)(1)(iii)(B) to require the reporting of the cumulative number of shares executed regular way at prices that could have filled the order while the order was in force, as reported pursuant to an effective transaction reporting plan or effective national market system plan.[441] The Commission believes that market participants would benefit from more information about the number of shares that executed while an executable NMLO or executable order submitted with a stop price was in force. If a market center or broker-dealer is unable to execute NMLOs or stop orders despite a large number of shares executing in the market at large, market participants may want to take that into account when selecting a market center or broker-dealer. One commenter suggested a new execution quality metric called a ''non-marketable benchmark.''[442] The commenter's benchmark would ''provide a reference for evaluating the extent to which an NMLO could have been filled'' and considers shares executed on national market system exchanges as well as regular way off-exchange executions reported to the FINRA trade reporting facility.[443] Under the proposal, the share count for each order would be capped at the order size. This would allow market participants to see how much activity took place while executable NMLOs and executable orders submitted with stop prices were in force and could give market participants an indication of how effective the market center or broker-dealer is at executing NMLOs and stop orders. This is similar to the benchmark metric suggested by the commenter (*i.e.,* including both exchange and TRF trades), but is qualified by whether or not the NMLO or stop order is executable (not merely that it was in force). The Commission believes that by proposing to restrict the benchmark metric to only those NMLOs or stop orders that are executable would give a more realistic view of the opportunities available to that order. If a NMLO or stop order is never actually executable, inclusion of the order in the metrics could distort the overall view of a market center or broker-dealer's performance. When combined with execution information, the metric should provide information about how many trades executed while a NMLO or stop order could have been filled. This metric could then be combined with information on total executions in order to estimate a fill rate that is conditional on whether market prices reached levels at which NMLOs or stop order could have been filled (''conditional fill rate'').

For example, if a NMLO for 200 shares becomes executable and the tape reveals that subsequently 100 consolidated shares were executed at the NMLO's limit price, then the benchmark metric would be 100 shares. If a market center partially executed 50 shares of the NMLO, the conditional fill rate would be 50 shares/100 shares =

[435] *See* Minimum Pricing Increments Proposal.

[436] *See supra* section IV.B.1.

[437] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18729 (describing analysis that found, among other things, that in May 2020, ''40% of [odd-lot] transactions (representing approximately 35% of all odd-lot volume) occurred at a price better than the NBBO'').

[438] *See* Bartlett et al. (2022). The authors found that this percentage increases monotonically in the stock price, for example, for bid prices, increasing from 5% for the group of lowest-price stocks in their sample, to 42% for the group of highest-priced stocks.

[439] *See supra* section IV.B.2.

[440] *See* proposed Rule 605(a)(1)(i)(D) and (E) (for shares executed at the receiving market center or broker-dealer and shares executed away, respectively).

[441] Generally, ''regular way'' refers to bids, offers, and transactions that embody the standard terms and conditions of a market whereas a non-regular way transaction refers to one executed other than pursuant to standardized terms and conditions, such as a transaction that has extended settlement terms. *See, e.g.,* Regulation NMS Adopting Release, 70 FR 37496 (Jun. 29, 2005) at 37537 n.326.

[442] *See* FIF III, Appendix 1 at 8–10.

[443] *Id.*

50%.[444] If the market center does not execute the NMLO, the conditional fill rate would be 0 shares/100 shares = 0%.

On the other hand, if the tape reveals that 500 consolidated shares were executed at the 200-share NMLO's limit price subsequent to the limit order becoming executable, the benchmark metric would be capped at the order size to be 200 shares, since the market center would have been able to fully execute the 200-share order. If the NMLO executes, the conditional fill rate would be 200 shares/200 shares = 100%.[445] If the NMLO does not execute, the conditional fill rate would be 0 shares/200 shares = 0%. If the market center has two such NMLOs, one that executes and one that does not, the total conditional fill rate would be (0 + 200)/(200 + 200) = 50%.

Request for Comment

The Commission seeks comment generally on the reporting of certain information for beyond-the-midpoint limit orders, executable NMLOs, and executable orders with stop prices. In particular, the Commission solicits comment on the following:

43. Should market centers and broker-dealers be required to report the number of orders that received either a complete or partial fill? Why or why not?

44. Should the Commission also require these entities to report the cumulative number of shares executed regular way at prices that could have filled the order while the order was in force? Do commenters believe this statistic would provide a meaningful point of comparison for execution quality for non-marketable order types? Why or why not? Should the Commission require an alternative metric? Why or why not?

V. Proposed Summary Execution Quality Reports

Rule 605 requires market centers to prepare detailed execution quality statistics and, as required by the Rule 605 NMS Plan, make this data available via large electronic data files.[446] The required format for the reports makes them machine-readable and suitable for further processing and analysis.[447] However, the sheer number of rows needed to provide symbol-by-symbol data and the fact that human-readable formatting is not required means that Rule 605 reports are not readily usable by market participants and other interested parties that may prefer to review summary statistics, rather than conducting further analysis on the data. Furthermore, some market participants and other interested parties do not have access to software or possess programming skills necessary to conduct such analysis. Accordingly, the Commission is proposing to require all market centers and broker-dealers that are subject to Rule 605's reporting obligations to produce summary execution quality statistics, in addition to the more detailed reports required by Rule 605(a)(1).[448]

As recognized by several commenters to the 2018 Rule 606 Amendments, in recent years a working group associated with the Financial Information Forum[449] developed a standardized template that firms may use when publicly disclosing summary information about execution quality for retail investor orders in exchange-listed stocks (''FIF Template'').[450] Although the reports produced using the FIF Template may be useful, given that this disclosure is voluntary, only a few firms are making or have made such disclosures.[451] Commenters have suggested that the Commission require broker-dealers to produce a similar summary report.[452] For example, one commenter on the 2018 Rule 606 Amendments[453] stated that this proposal ''neglect[ed] to include any meaningful retail disclosure requirements relating to execution quality, either on a customer-specific or publicly aggregated basis,'' and that the type of disclosure provided in the FIF Template ''must be added to enable investors, third-party analysts, academic

[444] The unconditional fill rate (*i.e.,* the number of executed shares divided by the number of submitted shares) in this case would be 50 shares/200 shares = 25%, revealing that only a quarter of the NMLO was executed. The conditional fill rate adjusts for the fact that available market depth was insufficient to fill the entire order, and only compares the number of executed shares to the number of shares that are available at the limit price.

[445] Note that, if the metric were not capped at the order size, the conditional fill rate would be 200 shares/500 shares = 40%, which reflects that the order size was smaller than the cumulative number of shares executed during the NMLO's lifespan. Capping at the order size therefore will result in the metric only capturing whether broker-dealers were able to fill order sizes as given.

[446] *See* 17 CFR 242.605(a)(1) and (2); Rule 605 NMS Plan, at V and VI.

[447] *See* Rule 605 NMS Plan, at V (''Files shall be prepared in standard, pipe-delimited ('|') ASCII format and compressed using standard Zip compression.'').

[448] While current Rule 605 applies to market centers only, the Commission also is proposing to expand Rule 605's reporting obligations to broker-dealers, subject to a customer account threshold for reporting. *See supra* section III.A. Requiring broker-dealers to produce summary reports would align those entities that would be required to produce detailed execution quality statistics with those entities that would be required to produce the summary reports.

[449] According to the Financial Information Forum, the organization was formed in 1996 to provide a centralized source of information on the implementation issues that impact financial services and technology firms, and its participants include trading and back office service bureaus, broker-dealers, market data vendors, and exchanges. *See* FIF II at 1 n.1.

[450] *See* Financial Services Roundtable Letter at 4 (stating that the Financial Information Forum has established a Rule 605/606 working group that has sought to improve the execution quality statistics for retail investors and that the FIF Template includes order size, average order size, shares executed at the market quote or better, price improvement percentage, average savings per order, and execution speed); Fidelity Letter at 8 (identifying the commenter as one of the few firms that voluntarily publishes these industry-standardized statistics); IHS Markit Letter at 30 (stating that the introduction of voluntary reporting of execution quality metrics, under the auspices of the Financial Information Forum, has demonstrated improvement in execution quality). *See also* Financial Information Forum, Retail Execution Quality Statistics, *available at https://fif.com/tools/retail-execution-quality-statistics.*

[451] *See* EMSAC I at 0099:10–12 (Bill Alpert, Barron's) (''These are selective disclosures. Only a few brokers and market makers are making them, so a mandate would be nice.''); Healthy Markets I at 7 n.17 (stating that this information provided is ''incredibly valuable,'' even if participation is very limited, with just three retail brokers and three wholesale market-making firms providing data). *See also infra* notes 553–555 and accompanying text (discussing the limited number of firms that have produced reports utilizing the FIF Template at various points in time).

[452] *See* Healthy Markets I at 7 (suggesting that the Commission mandate at least the same level of disclosure for retail orders as was provided pursuant to the FIF Template); Fidelity Letter at 7–8 (suggesting that the Commission require brokers to make publicly available on their website execution statistics, such as price improvement, execution price, execution speed, and effective spread); Financial Services Forum at 5 (stating that although the disclosed metrics do not have to mirror the FIF Template, the Commission should consider requiring similar metrics that are output driven). *See also* Fidelity Letter at 9 (stating that dividing data between S&P 500 stocks and other exchange-listed stocks is a standard metric that is used to break down execution quality statistics in the FIF Template).

[453] Rule 606(b)(1) requires broker-dealers to produce to customers, upon request, a human-readable report with high-level customer-specific order routing information, but these reports do not contain any execution quality information. *See supra* note 54 and accompanying text. Although the 2018 Rule 606 Amendments modified the orders covered by Rule 606(b)(1), the required disclosures under Rule 606(b)(1) did not change. *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58340 n.24.

[454] Consumer Federation II at 1 (suggesting that the Commission add to the FIF Template information about the NBBO at the time a marketable order is received, the NBBO at the time the order is executed, and any difference between them, and stating that these metrics would give additional information about whether any delays in routing and execution affect the ultimate price the investor pays). *See also* Angel Letter at 3–7 (suggesting that brokerage firms be required to display summary execution quality statistics on their websites, providing several alternative formats as samples, and suggesting that the statistics include information about the number of customer complaints received); Angel Letter at 2 (stating that the Rule 605 reports are too raw for most investors and few investors have the expertise to interpret the reports).

researchers, and regulators to examine the extent to which retail brokers are best serving their clients.'' [454]

When adopting Rule 605, the Commission made a decision to require market centers to produce detailed reports in order to avoid the dangers of overly general statistics.[455] The Commission stated that ''[a]ssigning a single 'execution quality' score to market centers, for example, would hide major differences in execution quality, potentially creating far more problems than it solved.'' [456] The large volume of statistical data in the Rule 605 reports allows market participants and other interested parties to select the order characteristics that they find are most appropriate to use to compare execution quality, and their ability to conduct analyses would be enhanced by the modifications to Rule 605 proposed herein.[457] Yet many commenters have observed that also requiring firms to produce summary reports of the voluminous Rule 605 statistics would be useful,[458] and some market centers have voluntarily posted summary statistics based on the detailed execution quality statistics in their Rule 605 reports.[459] These voluntary reports have some utility, but the practice of producing summary statistics is not uniform and, even where summary statistics are provided, different formats may inhibit comparisons across firms.

Requiring market centers and broker-dealers to produce summary execution quality reports, in addition to the more detailed reports, would allow market participants and other interested parties to have more ready access to high-level data that would allow them to compare some of the more significant aspects of the execution quality provided by specific market centers and broker-dealers. In particular, it is currently challenging for individual investors to use Rule 605 reports, and these individual investors would be more readily able to use a summary report to make a more informed choice than they can currently about selection of a broker-dealer. Because these reports would be human-readable, individual investors could assess the data by reviewing and comparing summary reports without needing technical expertise or relying on an intermediary. The proposed summary reports would contain significantly more detail than a ''single 'execution quality' score'' [460] and thus would contain quantitative data for interested parties to assess, rather than imposing a single metric that might require a subjective judgement or obscure meaningful differences about a market center's or broker-dealer's execution quality. Moreover, by requiring reporting entities to produce summary reports in addition to, rather than instead of, the more detailed statistics called for by the current Rule, those market participants or other observers that would like to perform a more detailed or specific analysis would be able to download the more granular underlying data files and perform such analysis.[461]

Proposed Rule 605(a)(2) would require every market center, broker, or dealer to make publicly available for each calendar month a report providing summary statistics on all executions of covered orders that are market and marketable limit orders that it received for execution from any person.[462] Individual investors trading NMS stocks primarily use marketable orders (including market orders and marketable limit orders) that seek to trade immediately at the best available price in the market. Individual investors would be the most likely consumers of the summary reports, and therefore it would provide significant benefit for the summary reports to cover the types of orders that individual investors use most frequently.[463] Other order types, such as NMLOs, would not be included in the summary reports because including these types of orders would increase the amount of information contained in the summary report, and thus detract from its summary nature, and the summary execution quality information about these types of orders would be less likely to be useful to individual investors. In addition to representing a smaller share of trades by individual investors, a significant risk of including NMLOs is that they may be more likely to not be executed during the time period that they are executable and have a time lag before they become executable again, and therefore it would become more difficult to assess other aspects of execution quality, particularly at an aggregate level.

The proposed summary report would include a section for NMS stocks that are included in the S&P 500 Index as of the first day of the month and a section for other NMS stocks.[464] Rule 606(a)(1) similarly separates the required quarterly report on order routing into a section for securities that are included in the S&P 500 Index and a section for other NMS stocks.[465] When adding this provision to Rule 606 in the 2018 Rule 606 Amendments, the Commission stated that the handling of NMS stocks may vary based on their market capitalization value and trading volume, and thus customers that place held orders could benefit from a delineation based on the S&P 500 Index.[466] The same reasoning applies to the proposed summary reports pertaining to execution quality statistics under Rule 605. Moreover, within each section, each symbol would be equally weighted based on share volume.[467] Equal weighting of each symbol would facilitate the comparability of execution quality statistics among market centers or broker-dealers that receive for execution different mixes of stocks and prevent the nature of the stocks traded from making it more difficult to determine how the reporting entity performed with respect to execution quality for the particular mix of orders that it received for execution.[468] Further, equal weighting by share volume could be calculated using data collected to produce the Rule 605(a)(1) reports and would not require the collection of additional data.

Each section of the report would include, for market orders and marketable limit orders, the following

[455] *See supra* note 161 and accompanying text.

[456] Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75419.

[457] *See supra* note 164 and accompanying text.

[458] *See supra* notes 134–135 and 452–454 and accompanying text.

[459] *See supra* notes 450–454 and accompanying text.

[460] *See supra* note 456 and accompanying text.

[461] Those market participants or other observers that perform their own analyses using data from Rule 605 reports might find it useful also to review firms' summary reports to obtain quick access to an overview of the data or assess information outside the scope of their own data analyses. Conversely, even if consumers of the summary reports do not review the more detailed Rule 605 data themselves, they might benefit from the detailed Rule 605 reports if independent analysts, consultants, broker-dealers, the financial press, and market centers analyze the disclosures and produce more digestible information using the data, which analysis might include details not present in the summary reports.

[462] *See* proposed Rule 605(a)(2).

[463] Similarly, the FIF Template covers standard market orders. *See* Fidelity Brokerage Services LLC, Retail Execution Quality Statistics, *available at https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/FIF-FBS-retail-execution-quality-stats.pdf. But see* Angel Letter, at 7 (recommending summary statistics specific to NMLOs).

[464] *See* proposed Rule 605(a)(2).

[465] *See* 17 CFR 242.606(a)(1). The FIF Template also segregates the reported execution quality statistics based on whether or not the securities are in the S&P 500 Index, and one commenter stated that this is a standard metric. *See supra* note 452.

[466] *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58378.

[467] *See* proposed Rule 605(a)(2).

[468] For example, without equal weighting, differences in summary-level execution quality statistics between a market center that receives more high-priced stocks for execution and market center that receives more low-priced stocks for execution may be more attributable to the different mix of stocks, rather than differences in the behavior of the market center.

summary statistics for executed orders: (i) the average order size; (ii) the percentage of shares executed at the quote or better; (iii) the percentage of shares that received price improvement; (iv) the average percentage price improvement per order; (v) the average percentage effective spread; (vi) the average effective over quoted spread, expressed as a percentage; and (vii) the average execution speed, in milliseconds.[469] Together, the proposed summary-level statistics are intended to provide an overview of price-based information and execution speed. The Commission notes that these categories of statistics are very similar to those used in the FIF Template, and that both the summary statistics in proposed Rule 605(a)(2) and the statistics reflected in the FIF Template focus on statistics that are most relevant to evaluating what type of pricing orders received and how quickly orders were executed.[470] The proposed summary report would include average percentage of price improvement per order, average percentage effective spread, and average E/Q, expressed as a percentage, whereas the FIF Template includes average savings per order, expressed in dollars. The three statistics that would be in the proposed summary report each provide a different view of the pricing provided to orders, and, if anything, provide a more robust picture of this pricing than the single metric in the FIF Template. For example, average effective spread is a comprehensive statistic that is a useful single measure of the overall liquidity premium paid by those submitting orders for execution.[471]

The Commission is proposing to require that the summary reports must be made available using the most recent version of the XML schema and the associated PDF renderer published on the Commission's website.[472] The requirement to use the Commission's XML schema is intended to ensure that the data is provided in a format that is structured and machine-readable, and this would allow users to more easily process and analyze the data, as well as provide consistency of format across reports. Further, the requirement that the same data should be provided through the use of a PDF renderer is intended to ensure that the reports are also available in a human-readable format and consistently presented across reports. A human-readable format would be a format that can be naturally read by an individual. Preparing reports in a human-readable format allows users that prefer only to review individual reports, and not necessarily aggregate or conduct large-scale data analysis on the data, to access the data easily. The Commission notes that Rule 606 similarly provides that the required reports on order routing shall be made available using the most recent versions of the Commission's XML schema and associated PDF renderer.[473] In addition, although the FIF Template is a general template and does not specify a particular format for the reports, market participants choose to voluntarily prepare reports using the FIF Template. The number of reporting entities that would be required to prepare summary reports under proposed Rule 605(a)(2) would be much greater than the number of entities that have chosen to produce reports voluntarily using the FIF Template, and requiring a uniform format would facilitate users' ability to compare information across reports.

Rule 605 requires every national securities exchange on which NMS stocks are traded and each national securities association to act jointly in establishing procedures for market centers to make the reports required by Rule 605(a)(1) available to the public in a uniform, readily accessible, and usable electronic form.[474] The Commission is proposing to amend this provision, which would be reorganized into proposed Rule 605(a)(3), so that the proposed summary reports would also be made available in accordance with the procedures established by the Plan.[475] Rule 605 also specifies that the detailed reports required by Rule 605(a)(1) must be posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting.[476] As proposed, these same requirements would be reorganized into proposed Rule 605(a)(5) and would be extended to the summary reports for the same reasons expressed when these requirements were adopted for the Rule 605(a)(1) reports and because it would be useful to users of the reports for the Rule 605(a)(1) reports and proposed

[469] *See* proposed Rule 605(a)(2)(i)–(vii).

[470] *See supra* note 450 and accompanying text. The categories in the FIF Template for average order size (shares); shares executed at current market quote or better (%); price improvement (%); and average execution speed (seconds) appear to be directly comparable to the categories in proposed Rule 605(a)(2) for the average order size, the percentage of shares executed at the quote or better, the percentage of shares that received price improvement, and the average execution speed, in milliseconds. Moreover, the proposed use of milliseconds, rather than seconds, to measure average execution speed is consistent with proposed changes to the timestamp conventions, as discussed above. *See supra* section IV.B.3.

[471] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75424. The statistics proposed to be included in the summary report are also generally consistent with commenters' suggestions that the summary report either follow the FIF Template or provide similar metrics. *See supra* notes 452–454 and accompanying text. One commenter suggested that the summary report include information about the NBBO at the time of order receipt and at the time of order execution to give information about whether delays in routing and execution affect the execution price. *See supra* note 454. This effect would likely also be evident in the average effective spread and average E/Q.

[472] *See* proposed Rule 605(a)(2). The Commission's schema would be a set of custom XML tags and XML restrictions designed by the Commission to reflect the disclosures in proposed Rule 605(a)(2). XML enables data to be defined, or ''tagged,'' using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be automatically recognized and processed by a variety of software applications, such as databases, financial reporting systems, and spreadsheets, and then made immediately available to the end-user to search, aggregate, compare, and analyze. In addition, the XML schema could be easily updated to reflect any changes to the open standard. XML and PDF are ''open standards,'' which is a term that is generally applied to technological specifications that are widely available to the public, royalty-free, at no cost.

[473] *See* 17 CFR 242.606(a)(1), (b)(1)(iii), and (b)(3). When adopting the 2018 Rule 606 Amendments, the Commission stated that the XML schema was designed to ensure that the data is provided in an XML format that is structured and machine-readable, so that the data can be more easily processed and analyzed, and that by requiring use of the associated PDF renderer, the XML data would be instantly presentable in a human-readable PDF format and consistently presented across reports. *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58364. The Commission shares the same goals in proposing that the Rule 605(a)(2) reports be produced according to an XML schema and associated PDF renderer.

[474] *See* 17 CFR 242.605(a)(2). As discussed above, the Commission is proposing to expand this requirement, and the other procedural requirements in proposed Rule 605(a)(2) and (3), to cover broker-dealers. *See supra* note 155 and accompanying text.

[475] *See* proposed Rule 605(a)(3). Among other things, the Plan requires each market center to arrange with a single plan participant to act as the market center's Designated Participant. *See* Plan, at section VIII. Inclusion of proposed Rule 605(a)(2)'s summary reports within the scope of the Plan would promote consistent administration of Rule 605 and allow the Designated Participant for each reporting entity to play a role with respect to the reports required by Rule 605(a)(1) and proposed Rule 605(a)(2). The Plan also establishes the formats and fields for the reports currently required under Rule 605(a)(1). Because proposed Rule 605(a)(2) requires the use of the Commission's XML schema and associated PDF renderer, the Plan would not establish the formats and fields for the summary reports. Further, as proposed, the existing provision that states that, in the event there is no effective market system plan, market centers shall prepare their reports in a consistent, usable, and machine-readable electronic format and make such reports available for downloading from an internet website that is free and readily accessible to the public would be reorganized as proposed Rule 605(a)(4) and modified to explicitly refer to the requirements in Rule 605(a)(1). *See* proposed Rule 605(a)(4). As proposed, this provision would not apply to the summary reports that would be required by proposed Rule 605(a)(2). The proposed summary reports would not need to be included in proposed Rule 605(a)(4) because the XML schema and associated PDF renderer would specify the necessary format for the reports and proposed Rule 605(a)(5) would contain the requirement for internet posting.

[476] 17 CFR 242.605(a)(2).

Rule 605(a)(2) reports to be available for the same period of time.[477]

Further, Rule 605 specifies that the detailed reports required by Rule 605(a)(1) must be made available within one month after the end of the month addressed in the report.[478] The Commission is proposing to renumber this provision as proposed Rule 605(a)(6) and to extend this requirement to the Rule 605(a)(2) reports.[479] The Commission believes that firms could produce the proposed Rule 605(a)(2) report alongside the Rule 605(a)(1) report, which must be produced monthly, because both reports are based on the same underlying data. Additionally, it would be useful for users of the reports to have access to the detailed reports and summary reports at the same time so that they could review the aggregated data in the summary reports and then conduct further analysis using the detailed reports, as needed.

Request for Comment

The Commission seeks comment generally on the proposed requirement that market centers and brokers-dealers that are required to produce detailed execution quality statistics also provide a summary report. In particular, the Commission solicits comment on the following:

45. Should a market center or broker-dealer that is subject to Rule 605's reporting requirement be required to also provide a summary report reflecting aggregated execution quality information? Why or why not? Do commenters agree that summary reports would make execution quality information more accessible to individual investors? Please explain.

46. Should the summary report be required to be divided into separate categories according to whether or not securities are included in the S&P 500 Index? Why or why not? Are there any alternative means to group securities that have higher market capitalization or trading volume that should be required to be used to organize the summary statistics, instead of or in addition to dividing the securities included in the report according to whether or not they are included in the S&P 500 Index? Should the summary report include order size categories? Why or why not? Please explain and provide data, if available.

47. Should stocks be required to be equally weighted by symbol based on share volume within each section? Why or why not? Is there another method of weighting the stocks that would be preferable (*e.g.,* equal weighting by symbol based on dollar volume or applying a common weighting scheme across securities)? Please explain.

48. Should the summary report be limited to covered orders that are market or marketable limit orders? Why or why not? Would it be preferable to include other specific categories of covered orders (*i.e.,* marketable IOCs, beyond-the-midpoint limit orders, executable NMLOs, executable orders with stop prices) or to include all covered orders? Do commenters agree with the proposed aggregated statistics to include in the summary report? Are there any aggregated statistics that commenters would eliminate? Are there any execution quality statistics that would be required pursuant to proposed Rule 605(a)(1) for which commenters would add corresponding aggregated statistics to the summary report? Please explain.

49. Should the summary reports be required to be made available using the most recent version of an XML schema and an associated PDF renderer as published by the Commission? Why or why not? Is there an alternative, machine-readable and/or human-readable format, that would be preferable? Would it be preferable for the Plan to establish the required format, including an associated schema, for the summary reports?

50. Should the Commission require that summary Rule 605 reports be posted in a centralized location? Alternatively, should the Commission require both summary and detailed reports to be posted in a centralized location? Why or why not? Do commenters have a view on how centralized posting could be implemented? Are there other ways the Commission could improve the accessibility of the reports?

VI. Paperwork Reduction Act

Certain provisions of the proposed rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[480] 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. 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 is proposing to alter an existing collection of information and apply such collection of information to new categories of respondents. The title of such existing collection of information is: Rule 605 of Regulation NMS (f/k/a Rule 11Ac1–5).[481]

A. Summary of Collection of Information

The proposed amendments create burdens under the PRA by: (1) adding new categories of respondents to the existing collection of information and (2) modifying the requirements of such existing collection of information. The proposed amendments do not create any new collections of information.

The categories of new respondents subject to Rule 605, as proposed to be amended, are larger broker-dealers and new market centers, consisting of SDPs and entities that would operate proposed qualified auctions or act as market centers for orders that were previously not covered by the Rule, *e.g.,* fractional share orders.

The proposed amendments would modify both the scope of the standardized monthly reports required under Rule 605 and the required information. Rule 605, as proposed to be amended: (1) expands the definition of ''covered order'' to include certain orders submitted outside of regular trading hours, certain orders submitted with stop prices, and non-exempt short sale orders; (2) modifies the existing order size categories to base them on round lots rather than number of shares and includes additional order size categories for fractional share, odd-lot, and larger-sized orders; (3) creates a new order type category for marketable IOCs and replaces three existing categories of non-marketable order types with three new categories of order types (beyond-the-midpoint limit orders, executable NMLOs, and executable orders with stop prices); (4) eliminates current time-to-execution reporting buckets and requires average time to execution, median time to execution, and 99th percentile time to execution, each as measured in increments of a

[477] *See* proposed Rule 605(a)(5). *See also* 2018 Rule 606 Amendments Release, 83 FR at 58380 (stating that the requirement to keep Rule 605(a)(1) reports posted on a website that is free and readily accessible for three years is appropriate because a three-year retention period is consistent with the requirement under Rule 17a–4(b) that broker-dealers preserve certain documents for a period of not less than three years; the reports will be useful and not lead to misleading analyses because the Commission expects customers and the public to use historical information to compare information from the same time period; and the public information will provide a historical record of a market center's order execution information).

[478] 17 CFR 242.605(a)(3).

[479] *See* proposed Rule 605(a)(6).

[480] 44 U.S.C. 3501 *et seq.*

[481] OMB Control Number 3235–0542.

millisecond or finer; (5) modifies realized spread statistics to require realized spread to be calculated after 15 seconds and one minute; and (6) requires new statistical measures of execution quality including average effective over quoted spread, percentage effective and realized spread statistics, a size improvement benchmark, and certain statistical measures that could be used to measure execution quality of NMLOs. The proposed amendments would require all reporting entities to make a summary report available that would be formatted in the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website. Finally, as a result of the proposed amendments to Rule 605, the current Rule 605 NMS Plan participants would need to amend the NMS Plan to account for the new proposed data fields.

B. Proposed Use of Information

The purpose of the information collection is to make information about order execution practices available to the public and allow investors, broker-dealers, and market centers (which include exchange markets, OTC market makers, and ATSs) [482] to undertake a comparative analysis of these practices across markets. Broker-dealers may use the information to make more informed choices in deciding where to route orders for execution and to evaluate their internal order handling practices. Investors may use the information to evaluate the order handling practices of their broker-dealers. Market centers may use the information to compete on the basis of execution quality.

C. Respondents

The collection of information obligations of Rule 605 apply to larger broker-dealers and market centers that receive covered orders in national market system securities (collectively, ''reporting entities''). The Commission estimates that there are currently approximately 236 reporting entities (93 OTC market makers, plus 16 national securities exchanges, 1 national securities association, 94 exchange market makers, and 32 ATSs).[483] However, under the proposed amendments, the Commission believes there would be 359 reporting entities (93 OTC market makers, 85 broker-dealers that introduce or carry 100,000 or more customer accounts,[484] 16 national securities exchanges, 1 national securities association, 94 exchange market makers, 32 ATSs,[485] plus 38 new market center respondents [486]) that would be subject to the collection of information obligations of Rule 605. Each of these respondents would be required to respond to the collection of information on a monthly basis.

In addition, the proposed amendments to Rule 605 would require the existing NMS Plan participants (16 national securities exchanges and 1 national securities association) to prepare and file an amendment to the existing NMS Plan.

D. Total PRA Burdens

As proposed, Rule 605 would require broker-dealers and market centers to make available to the public monthly order execution reports in electronic form. The Commission believes that broker-dealers and market centers retain most, if not all, of the underlying raw data necessary to generate these reports in electronic format or, if they do not, may obtain this information from publicly available data sources.[487] Consequently, the Rule would not require additional data collection or recordkeeping burdens. Respondents could either program their systems to generate the statistics and reports, or transfer the data to a service provider (such as an independent company in the business of preparing such reports or an SRO) that would generate the statistics and reports.

The Commission estimates that the initial and ongoing burdens would be different for those respondents that are currently required to prepare reports and for new respondents. The Commission estimates that proposed Rule 605 amendments would result in an initial burden for current respondents of 50 hours per respondent [488] for systems updates to ensure that data responsive to the amended requirements is correctly collected and formatted. The initial burden estimate represents the work that would need to be done by existing respondents to modify their systems to collect data required under the proposed amendments to Rule 605 and generate the monthly reports. The estimate includes time required to program and test automated systems to collect the necessary data, as well as review and approval by compliance personnel. The Commission does not believe the information required to be aggregated and included in Rule 605 reports, as proposed to be amended, would require existing respondents to acquire new hardware or systems to process the information required in the reports. The Commission further estimates that the proposed Rule 605 amendments would result in an ongoing monthly burden of 8 hours per respondent to collect the necessary data and to prepare the required Rule 605 reports, for a total annual burden of 96 hours per respondent.[489] This estimate represents the time that would be required to verify automated processes are functioning as intended and post and prepare the required reports, or transfer data to a service provider to generate the reports.[490] With an

[482] *See* 17 CFR 242.600(b)(46).

[483] The current PRA for Rule 605 estimates 319 reporting entities (153 OTC market makers, plus 24 exchanges, 1 securities association, 80 exchange market makers, and 61 ATSs). Based on updated estimates of the number of respondents, the Commission estimates that there are only 236 current reporting entities.

[484] These 85 brokers-dealers include 37 broker-dealers that act as introducing brokers.

[485] As of September 30, 2022, there are 32 NMS Stock ATSs that have filed an effective Form ATS–N with the Commission.

[486] These 38 new market center respondents would consist of 20 market centers that would need to produce reports as a result of including fractional share orders within the scope of Rule 605, 10 SDPs, and 8 qualified auctions.

[487] National securities exchanges, national securities associations, and registered brokers and dealers are subject to existing recordkeeping and retention requirements including Rule 17a–1 (for self-regulatory organizations (''SROs'')); Rules 17a–3 and 17a–4 (for broker-dealers). *See* 17 CFR 240.17a–1, 17 CFR 240.17a–3, and 17 CFR 240.17a–4. The Commission's estimates include the Rule's requirement that reporting market centers and broker-dealers keep Rule 605 reports posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the internet website. *See* proposed Rule 605(a)(5).

[488] The Commission believes the monetized initial burden for this requirement to be $4,368,360. The Commission derived this estimate based on per hour figure from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff 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 hours)] = $18,510 per respondent for a total initial monetized burden of $4,368,360 ($18,510 × 236 respondents).

[489] The Commission believes the monetized annual burden for this requirement to be $8,847,168. The Commission derived this estimate based on per hour figure from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff 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 Attorney at $406 for 6 hours) + (Compliance Manager at $344 for 2 hours)) × 12 reports per year] = $37,488 per respondent for a total annual monetized burden of $8,847,168 ($37,488 × 236 respondents).

[490] The Commission's currently approved PRA for Rule 605 (OMB Control Number 3235–0542), last updated in April 2022, estimates that current respondents each will spend 6 hours per month to collect the data necessary to generate the reports, or 72 hours per year. Although the proposed amendments to Rule 605 would require additional data fields and the generation of summary reports, the Commission believes the data collection and

estimated 236 respondents currently subject to Rule 605, the total initial burden to comply with the Rule 605 amendments is estimated to be 11,800 hours while the monthly reporting requirement is estimated to be 22,656 hours per year (236 × 96). The burdens for respondents currently reporting under Rule 605 are likely to be lower than those of new reporting entities because currently-reporting entities already have systems in place to collect the data necessary to generate reports under the current Rule. These estimates include the impact of preparing and making summary reports available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website.

The Commission estimates that proposed Rule 605 amendments would result in an initial burden for new respondents of 100 hours for each respondent [491] for systems updates to ensure that data responsive to the amended requirements is correctly gathered and formatted. This burden is higher than the estimated burden for current respondents because new respondents do not currently have in place the systems to collect the information required for current Rule 605 reports. These respondents would likely require additional time to collect the relevant information. In addition, this estimate includes additional time for programming and testing automated systems to collect the necessary data and additional hours for review and approval by compliance personnel. Once the relevant data is collected, respondents could either program their systems to generate the reports, or transfer the data to a service provider that would generate the reports. Respondents would likely not be required to acquire new hardware or other technological resources to be able to collect the data required by the proposed rule given that respondents would already have computing systems in place to, for example, transmit and process order information, and such systems could be leveraged to collect the required data. Further, to the extent a respondent does not have the technological capabilities or resources to generate the reports in-house, such respondents would likely utilize a service provider, as discussed below. The Commission estimates that the proposed Rule 605 amendments would result in an ongoing monthly burden of 8 hours to collect the necessary data and to prepare the required Rule 605 reports, for a total annual burden of 96 hours per respondent. [492] With an estimated 123 new respondents subject to Rule 605, the total initial burden to comply with the Rule 605 amendments is estimated to be 12,300 hours while the monthly reporting requirement is estimated to be 11,808 hours per year (123 × 96). These estimates include the impact of preparing and making summary reports available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website.

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Table 2—Respondent Burdens for Producing Rule 605 Reports

report generation process should be an automated process that would not require substantial additional burden hours after initial set-up.

[491] The Commission believes the monetized initial burden for this requirement to be $4,553,460. The Commission derived this estimate based on per hour figure from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff 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 50 hours) + (Sr. Systems Analyst at $316 for 20 hours) + (Compliance Manager at $344 for 20 hours) + (Director of Compliance at $542 for 10 hours)] = $37,020 per respondent for a total initial monetized burden of $4,553,460 ($37,020 × 123 respondents).

[492] The Commission believes the monetized annual burden for this requirement to be $4,611,024. The Commission derived this estimate based on per hour figure from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff 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 Attorney at $406 for 6 hours) + (Compliance Manager at $344 for 2 hours)) × 12 reports per year] = $37,488 per respondent for a total annual monetized burden of $4,611,024 ($37,488 × 123 respondents).

Respondent Type	Number of Respondents	Burden Type	Burden per Respondent (Hours)	Annual Responses	Total Burden Hours (Number of Respondents x Burden per Respondent)[493]
OTC Market Makers	93	Initial	50		4,650
		Annual	8	12	8,928
Exchange Market Makers	94	Initial	50		4,700
		Annual	8	12	9,024
Exchanges	16	Initial	50		800
		Annual	8	12	1,536
Associations	1	Initial	50		50
		Annual	8	12	96
ATSs	32	Initial	50		1,600
		Annual	8	12	3,072
Totals for Current Respondents	**236**	**Initial**	**50**		**11,800**
		Annual	**8**	**12**	**22,656**
Broker-Dealers with ≥100,000 customer accounts	85	Initial	100		8,500
		Annual	8	12	7,140
Non-market center broker-dealers	20	Initial	100		2,000
		Annual	8	12	1,680
SDPs	10	Initial	100		1,000
		Annual	8	12	840
Qualified Auctions	8	Initial	100		800
		Annual	8	12	672
Total Burden for New Respondents	**123**	**Initial**	**100**		**12,300**
		Annual	**8**	**12**	**11,808**

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The Commission estimates that in lieu[493] of preparing both summary and detailed monthly reports in-house, an individual respondent could retain a service provider to prepare its monthly reports for between approximately $3,000 and $3,500 per month or approximately $36,000 to $42,000 per year.[494] This per-respondent estimate is based on the rate that a reporting entity could expect to obtain if it negotiated on an individual basis. Based on the $3,000 to $3,500 estimate, the monthly cost to the 359 respondents to retain service providers to prepare reports would be between approximately $1,077,000 and $1,256,000 ((359 × $3,000) and (359 × $3,500), respectively), or a total annual cost of between approximately $12,924,000 and $15,078,000 (($1,077,000 × 12) and ($1,256,000 × 12), respectively).

Finally, the 16 national securities exchanges and 1 national securities association would be required to amend the NMS Plan to account for the new data fields required to be reported and to include references to larger broker-dealers in addition to market centers. The Commission estimates that there would be a one-time (or initial) burden of 5 hours per respondent[495] to amend the NMS Plan to account for the new reporting fields and reporting parties, for a total burden of 85 hours (17 × 5). The Commission does not estimate that there would be any ongoing annual burden associated with the NMS Plan amendment to account for the new reporting fields and reporting parties. The Commission has based its estimate of SRO burden hours to amend the NMS Plan on the burden hours for existing NMS plans, while also taking into account the limited nature of the updates to the NMS Plan that would be required under the proposed amendments to Rule 605.

The Commission estimates that there would be outsourcing of legal time to develop and draft the NMS Plan amendment in order to account for additional data fields and reporting parties. The NMS Plan amendment would be an update to the list of formats and fields to track the data elements set forth in the Rule and add references to broker-dealers subject to the Rule, and therefore the Commission estimates the hours necessary to develop and draft the amendment would be significantly lower than other recent NMS plan amendments. The Commission staff estimates that, on average, each exchange and association would outsource 2 hours of legal time to prepare and file an amendment to the NMS Plan, at an average hourly rate of $496.[496] The Commission estimates that the aggregate one-time reporting burden for preparing and filing an amendment to the NMS Plan would be approximately $992 in external costs per national securities exchange or national securities association, for an aggregate external cost of $16,864 resulting from outsourced legal work [(2 hours @$ $496 per hour = $992) × (16 national securities exchanges and 1 national securities association)].

The Commission currently estimates a total initial burden of 24,169 hours for all respondents and a total annual burden of 34,368 hours for all respondents.[497]

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

51. Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information shall have practical utility;

52. Evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information;

53. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

54. 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

55. 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 S7–29–22. 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 S7–29–22 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. Economic Analysis

A. Introduction

The Commission is mindful of the economic effects that may result from the proposed amendments, including the benefits, costs, and the effects on efficiency, competition, and capital formation.[498] The following economic analysis identifies and considers the costs and benefits—including the effects on efficiency, competition, and capital formation—that could result from the proposed amendments to Rule 605.

When the Commission adopted Rule 11Ac1–5, which was later re-designated as Rule 605, in 2000, it stated that the

[493] In the case of annual burdens, the burden per respondent is the burden hours multiplied by the number of responses per year.

[494] The Commission's currently approved PRA for Rule 605 estimates that the retention of a service provider to prepare a monthly report would cost $2,978 per month, or approximately $35,736 per year. Although the individual line items required by the Rule 605 amendments would be different than the current Rule, the Commission does not believe that the overall cost of creating the required reports would differ substantially from these current estimates.

[495] The Commission believes the monetized initial burden for this requirement to be $40,222. The Commission derived this estimate based on per hour figure from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff 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: [(Attorney at $462 for 4 hours) + (Assistant General Counsel at $518 for 1 hour)] = $2,366 per respondent for a total initial monetized burden of $40,222 ($2,366 × 17 respondents).

[496] The Commission's estimates of the relevant wage rates for outside legal services takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

[497] (11,800 + 12,300 + 119) = 24,219 initial burden hours. (22,656 + 11,808) = 34,464 annual burden hours. The Commission estimates the monetized initial burden for all respondents to be $8,978,906 ($4,368,360 + $4,553,460 + $57,086) and the monetized annual burden for all respondents to be $13,458,192 ($8,847,168 + $4,611,024).

[498] Exchange Act section 3(f) requires the Commission, when it is engaged in rulemaking pursuant to the Exchange Act 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 will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). In addition, Exchange Act section 23(a)(2) requires the Commission, when making rules pursuant to the Exchange Act, to consider among other matters the impact that any such rule will have on competition and not to adopt any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2).

rule should facilitate comparisons across market centers and provoke more vigorous competition on execution quality and broker-dealer order routing performance.[499] However, under current Rule 605 reporting requirements, variations across broker-dealers in terms of the execution quality achieved by their order routing services are not currently observable by market participants using publicly available execution quality reports. Furthermore, in the subsequent decades, substantial changes in equity markets, including increases in trading speeds and fragmentation, have made it so that Rule 605 reports are less informative than they were when the Rule was adopted. Furthermore, the Commission believes that the proposed amendments to Rule 605, including expanding the scope of reporting entities, modernizing its content, and broadening its accessibility, would increase the relevance and use of the information contained in Rule 605 reports, and promote competition among market centers and broker-dealers. This increase in competition would ultimately lead to improved execution quality for investors.

The Commission recognizes that the proposed amendments would entail additional costs to market centers and broker-dealers of disclosing the required execution quality information. Market centers would face initial compliance costs when updating their methods for preparing Rule 605 reports, and broker-dealers that were previously not required to publish Rule 605 reports would face initial compliance costs, including but not limited to developing the systems and processes and organizing the resources necessary to generate the reports pursuant to Rule 605, and ongoing compliance costs to continue to publish Rule 605 reports each month.

The Commission has considered and is describing the economic effects of the proposed amendments to Rule 605 and wherever possible has quantified the likely economic effects of the proposed amendments. The Commission has incorporated data and other information, such as academic literature, to assist in the analysis of the economic effects of the proposal. However, because the Commission does not have, and in certain cases does not believe that it can reasonably obtain, data that may inform on certain economic effects, the Commission is unable to quantify those economic effects. Further, even in cases where the Commission has some data, the number and type of assumptions necessary to quantify certain economic effects would 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 amendments to Rule 605.

B. Market Failure

The Commission is proposing to update the disclosure of order execution information and expand the scope of reporting entities under Rule 605 to achieve a variety of improvements to market participants' access to information about execution quality, which the Commission does not believe are likely to occur through a market-based solution.

Because equity markets have changed substantially since the initial adoption of Rule 605's predecessor in 2000, and yet the content of the disclosures required by Rule 605 has not been substantively updated since then,[500] the utility of Rule 605 reports has been eroded, which has limited the Rule's ability to address the market failures identified in the Adopting Release, including market centers' limited incentives to produce publicly available, standardized execution quality reports.[501] Instead, the metrics currently required to be reported by Rule 605 are no longer as useful for comparing execution quality across market centers as they were when Rule 605 was adopted, and other metrics that would be useful for this purpose are not currently included in reporting requirements, which limits the current benefits of Rule 605 for promoting competition among market centers and improving execution quality for all types of investors.

The Commission does not believe that updates to Rule 605 metrics are likely to be achieved through a market-based solution.[502] Even if all markets centers were incentivized to voluntarily produce updated statistics for competitive or reputational reasons (*e.g.,* they may lose business if their competitors provide reports and they do not), under current rules, there is little incentive for all market centers to agree on a standardized set of updated statistics. For example, market centers may be incentivized to design ad hoc reports to highlight areas where they believe they compare well to their competitors. Without a standardized set of statistics, it could be difficult for market participants to easily compare execution quality across market centers.

Furthermore, it may be difficult for certain market participants to compute accurate and relevant execution quality metrics from data sources other than data collected pursuant to Rule 605, due to the lack of granularity and significant time delay of many other publicly available datasets, which can lead to imprecise or stale measures. This limits certain market participants' ability to conduct analyses that examine and compare execution quality across market centers and may thereby further inform investors. Therefore, rulemaking to modernize the information required by Rule 605 may prove beneficial.[503]

In addition to the need to modernize the content of Rule 605, it may also be appropriate to expand the scope of entities that would be required to prepare Rule 605 reports to include larger broker-dealers.[504] Broker-dealers and their customers are subject to a classic principal-agent relationship in which the customer (the principal) submits an order to a broker-dealer (the agent) to handle its execution on the customer's behalf; however, information asymmetries prevent the customer from being able to directly observe the broker-dealer's handling of the customer's order.[505] This limits the extent to which broker-dealers need to compete for order flow on the basis of

[499] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75417.

[500] In 2018, while amending Rule 606, the Commission also modified Rule 605 to require that the public order execution quality report be kept publicly available for a period of three years. *See supra* note 11.

[501] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75414–15.

[502] In the Adopting Release, the Commission stated that, while some market centers may have voluntarily made order execution information privately available to independent companies or broker-dealers, the information in these reports generally had not been publicly disseminated. To the extent such information had been made available, not all of it was useful or in a form that would allow for cross-market comparisons. *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75431.

[503] *See supra* sections IV.A and IV.B describing, respectively, the proposed amendments modifying the scope of orders covered and information required to be disclosed pursuant to Rule 605.

[504] *See supra* note 1 defining ''larger broker-dealer'' as a broker-dealer that meets or exceeds the ''customer account threshold,'' as defined in proposed Rule 605(a)(7). *See also supra* section III.A describing the proposed amendments expanding the scope of Rule 605 reporting entities to include larger broker-dealers.

[505] Similar information asymmetries were recognized in the Adopting Release, which stated that ''the decision about where to route a customer order is frequently made by the broker-dealer, and broker-dealers may make that decision, at least in part, on the basis of factors that are unknown to their customers.'' *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75433.

execution quality, which may result in lower execution quality for their customers.

As with market centers, most broker-dealers also do not necessarily have incentives to produce public and standardized execution quality reports, and in that way are subject to the same market failures identified in the Rule 605 Adopting Release and described above. Furthermore, as discussed above in the context of market centers, even if broker-dealers are incentivized to produce execution quality reports, for example for marketing purposes or to protect against reputation loss, there are few incentives for broker-dealers to provide execution quality information that is standardized.[506] As a result, individual investors and, to some extent, institutional investors,[507] have limited access to standardized information that could be used to compare how execution quality varies across broker-dealers.[508] Therefore, it may be appropriate to engage in rulemaking to expand Rule 605 reporting requirements to larger broker-dealers.

While ''data available for downloading from a free website in a consistent, usable, and machine-readable electronic format'' is currently accessible under Rule 605,[509] the data generated under Rule 605 is complex, and the raw data may be difficult for individual investors to access and aggregate. Rule 605 reporting entities have little incentive to voluntarily summarize their execution quality in a standardized way. Instead, in summarizing their execution quality information, reporting entities may be incentivized to select the measures and aggregation methodologies that make them look the most favorable. Therefore, absent regulation, there is little incentive for Rule 605 reporting entities to coordinate on a standardized summary report that could be used to easily and accurately compare execution quality across reporting entities.[510]

C. Baseline

The baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the proposed amendments are measured consists of the regulatory baseline, which frames investors' current access to execution quality information under Rule 605, as well as market participants' present ability to use the information contained in current Rule 605 reports to evaluate and compare execution quality across reporting entities. Lastly, the baseline consists of the extent to which Rule 605 currently promotes competition on the basis of execution quality, both among broker-dealers and among market centers.

1. Regulatory Baseline

(a) Current Rule 605 Disclosure Requirements

Currently, Rule 605 requires market centers to make available, on a monthly basis, standardized information concerning execution quality for covered orders in NMS stocks.[511] Under the Rule, aggregated execution quality information on covered orders is reported for each individual security, with the information for each security broken out into multiple order type and size categories.[512] This format serves the purpose of allowing market participants to control for differences in market centers' order flow characteristics when assessing execution quality information, facilitating more apples-to-apples comparisons of execution quality across market centers. This is because a particular market center's order flow may be made up of a different mixture of securities, order types, and order sizes, which may impact or constrain that market center's overall execution quality level.[513]

The execution quality information required to be disclosed in Rule 605 reports pertains to several different aspects of execution quality, including execution prices, execution speeds, and fill rates. Information on execution prices includes, for market orders and marketable limit orders, the average effective spread,[514] number of shares executed at prices better than the quote, at the quote, or outside the quote,[515] as well as average dollar amount per share that orders were executed better than the quote or outside the quote.[516] Information on execution speeds includes, for all order types, the cumulative number of shares executed within different time-to-execution buckets[517] and, for market and marketable limit orders, the share-weighted average time to execution of orders executed better than the quote, at the quote, or outside the quote.[518] Information that can be used to calculate fill rates includes, for all order types, the cumulative number of shares of covered orders, the cumulative number of shares of covered orders executed at the receiving market center, and the cumulative number of shares of covered orders executed at any other venue.[519]

Market participants have access to public information about the execution quality of market centers other than Rule 605. For example, some

[506] While the FIF Template provides a standardized template for summary information about execution quality for retail investor orders in exchange-listed stocks (*see supra* note 450), the Commission understands that currently only one retail broker voluntarily provides reports using the FIF Template. *See also infra* notes 554–555 and accompanying text (discussing the limited number of firms that have produced reports utilizing the FIF Template at various points in time). There are also some broker-dealers that disclose their own execution quality metrics on their respective websites, but the disclosures tend to differ in ways that make them difficult to compare, such as reporting different metrics, using different methodologies, or different samples of stocks. *See, e.g., Order Execution Quality,* TD Ameritrade, *available at https://www.tdameritrade.com/tools-and-platforms/order-execution.html; Execution Quality,* E*TRADE from Morgan Stanley, *available at https://us.etrade.com/trade/execution-quality; Our Execution Quality,* Robinhood, *available at https://robinhood.com/us/en/about-us/our-execution-quality/.*

[507] While institutional investors are likely to have access to alternative sources of execution quality information, such as Rule 606(b)(3) reports and transaction cost analysis, the information on execution quality that is individually collected by institutional investors is typically non-public and highly individualized, and therefore limited to the execution quality obtained from broker-dealers with which the institutional investors currently does business. Since Rule 605 reports are public, institutional investors could use these reports to assess the execution quality of the broker-dealers and market centers with which they do not currently do business. *See infra* section VII.C.1.(c)(2) for further discussion.

[508] Institutional and individual investor customers of broker-dealers may differ in their abilities to request execution quality information from their broker-dealers. *See infra* sections VII.C.1.(c)(1) and VII.C.1.(c)(2) for further discussion.

[509] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75436.

[510] *See supra* section V describing the proposed amendments requiring Rule 605 reporting entities to prepare summary reports of execution quality information.

[511] *See* 17 CFR 242.605.

[512] *See supra* notes 39–40 for a discussion and definitions of these order categories.

[513] For example, larger order sizes are typically more difficult to ''work'' than smaller order sizes, so the execution quality information of a market center that tends to handle larger order sizes would likely be more constrained than that of a market center that tends to handle smaller order sizes.

[514] *See* 17 CFR 242.605(a)(1)(ii)(A).

[515] *See* 17 CFR 242.605(a)(1)(ii)(B), 17 CFR 242.605(a)(1)(ii)(E) and 17 CFR 242.605(a)(1)(ii)(G), respectively.

[516] *See* 17 CFR 242.605(a)(1)(ii)(C) and 17 CFR 242.605(a)(1)(ii)(H), respectively.

[517] The time-to-execution categories currently defined in Rule 605 are shares executed from 0 to 9 seconds, shares executed from 10 to 29 seconds, shares executed from 30 to 59 seconds, shares executed from 60 to 299 seconds, and shares executed from 5 to 30 minutes. *See* 17 CFR 242.605(a)(1)(i)(F)–(J).

[518] *See* 17 CFR 242.605(a)(1)(ii)(D), 17 CFR 242.605(a)(1)(ii)(F) and 17 CFR 242.605(a)(1)(ii)(I), respectively.

[519] *See* 17 CFR 242.605(a)(1)(i)(B), 17 CFR 242.605(a)(1)(i)(D) and 17 CFR 242.605(a)(1)(i)(E). The fill rate can be calculated as Fill Rate = (Cumulative Number of Shares Executed at Receiving Market Center + Cumulative Number of Shares Executed at Other Venues)/(Cumulative Number of Covered Shares).

wholesalers and ATSs make additional order flow and execution quality statistics other than those required under Rule 605 available either on their websites or as part of their ATS–N filings.[520] However, these sources are either not standardized [521] or are not available across all market centers,[522] such that Rule 605 is an important source of standardized information about market center execution quality.

The Commission believes that standardized execution quality information is relevant to many market participants, including to both individual and institutional investors and their broker-dealers,[523] who are subject to a principal-agent relationship in which an order submitter (the principal) submits an order to an agent to handle on its behalf, but information asymmetries prevent the principal from being able to directly observe the agent's handling of the order. This can create possible conflicts of interest, in which the agent's incentives may not coincide with the interests of the principal.[524] These information asymmetries exist both between broker-dealers and their customers, who do not directly observe their broker-dealers' handling of their orders,[525] and between market centers and broker-dealers, who typically do not directly observe market centers' executions of their routed orders. Rule 605 serves to alleviate these information asymmetries by, first, giving broker-dealers access to information about the execution quality of market centers, which they can use to inform their routing decisions and, second, in conjunction with broker-dealer routing information from Rule 606 reports,[526] giving investors access to information about the execution quality achieved by the market centers to which their broker-dealers typically route.[527]

Information on the execution quality obtained by broker-dealers is particularly important for investors. As broker-dealers that route customer orders have many choices about where to route orders for execution,[528] their routing decisions affect the execution quality that their customers' orders receive, leading to significant variations in execution quality across broker-dealers. For example, a broker-dealer may route a marketable IOC order to a market center that is not posting any liquidity at the NBBO (in which case the order would be cancelled), or a broker-dealer may route a NMLO to a market center that is not attracting any trading interest (in which case the NMLO would likely be cancelled at the end of day, if not earlier). The authors of one recent academic working paper ran an experiment in which they placed identical simultaneous market orders across various broker-dealers, and found that the execution quality of these orders differed significantly in terms of average price improvement and effective spreads.[529] The authors argue that these differences in execution quality across broker-dealers are economically significant, as they estimate that every basis point difference in execution quality is equivalent to an annual cost to investors of $2.8 billion.[530] Given this evidence that there are significant differences in execution quality across broker-dealers, without access to standardized information about broker-dealer execution quality, it is difficult for investors to compare these differences when choosing a broker-dealer.

Given that Rule 605 reports contain aggregated information, some information asymmetries regarding the order execution quality achieved at different market centers are not fully addressed by Rule 605 because the principal is not able to use Rule 605 reports to observe the execution quality that the agent achieved for the principal's individual orders. However, the principal is able to receive a signal of the execution quality that the agent has achieved for comparable orders over a certain time period. This signal can be a useful proxy that investors and their broker-dealers can use to assess and compare the execution quality that they can expect to receive across market centers, and there is evidence that Rule 605 reports have indeed been used for this purpose. One academic study examining the introduction of Rule 605 found that the routing of marketable order flow by broker-dealers became more sensitive to changes in execution quality across market centers after Rule 605 reports became available.[531] The authors attribute this effect to broker-dealers factoring in information about the execution quality of market centers from Rule 605 reports when making their order routing decisions.

(b) Current Rule 606 Disclosure Requirements

Currently, under Rule 606, broker-dealers are required to identify the venues, including market centers, to which they route customer orders for execution.[532] Specifically, with respect to held orders, Rule 606(a)(1) requires broker-dealers to produce quarterly public reports containing information about the venues to which the broker-dealer regularly routed non-directed orders for execution, including any payment relationship between the broker-dealer and the venue, such as

[520] If an ATS provides one or more of its subscribers with aggregate platform-wide order flow and execution statistics that were not otherwise required disclosures under Rule 605, that ATS is required to either attach that information to its Form ATS–N, or certify that the information is available on its website. *See* Item 26 of Form ATS–N, *available at https://www.sec.gov//files/formats-n.pdf.*

[521] For example, reports contain different execution quality metrics or, if they contain the same execution quality metrics, these metrics are calculated using different methodologies, different samples of stocks, and/or different time horizons, making it difficult to compare across reporting entities. For example, some ATSs produce execution quality information on a monthly basis (*see, e.g., Unlocking Global Liquidity,* UBS, *available at https://www.ubs.com/global/en/investment-bank/electronic-trading/equities/unique-liquidity.html*), while at least one ATS operator produces reports on a quarterly basis (*see, e.g., JPM–X & JPB–X U.S. Quarterly Summary,* J.P. Morgan, *available at https://www.jpmorgan.com/solutions/cib/markets/jpm-x-jpb-x-us-quarterly-summary*).

[522] While the FIF Template represents a standardized set of execution quality statistics, only one wholesaler currently produces reports using the FIF Template. *See infra* note 555.

[523] *See infra* sections VII.C.1.(c)(1) and VII.C.1.(c)(2) for further discussions of how publicly available execution quality information may be useful for both individual and institutional investors.

[524] If there were no information asymmetries and the principal could perfectly observe the agent's handling of its order, and if there is competition among agents, then the principal-agent relationship would not necessarily result in any conflicts of interest as the principal would be able to directly observe the agent's actions and switch to another agent.

[525] *See supra* note 505, noting that a similar principal-agent problem was recognized in the Adopting Release.

[526] *See infra* section VII.C.2.(a)(1), which discusses issues with the usage of Rule 606 broker-dealer routing information and Rule 605 execution quality information to infer the execution quality achieved by broker-dealers.

[527] Some market participants may have access to sources of execution quality information that reduce these information asymmetries and may serve as an alternative to Rule 605 data. *See infra* section VII.C.1.(c) for a detailed discussion. Note that any source of ex post execution quality information is unlikely to eliminate this information asymmetry entirely, as it is likely infeasible for any agent to perfectly observe ex ante or even in real time how a principal will perform in executing their order.

[528] *See infra* section VII.C.3.(b)(1) for a discussion of fragmentation in the market for trading services.

[529] *See* Christopher Schwarz, Brad M. Barber, Xing Huang, Philippe Jorion & Terrance Odean, *The 'Actual Retail Price' of Equity Trades* (Aug. 28, 2022) *available at https://ssrn.com/abstract=4189239* (retrieved from SSRN Elsevier database). The authors find that this dispersion is due to off-exchange wholesalers systematically giving different execution prices for the same trades to different brokers.

[530] *See id.* at 24.

[531] *See* Boehmer et al.

[532] *See* 17 CFR 242.606.

any PFOF arrangements.[533] In addition, Rule 606(b)(1) requires broker-dealers to provide to their customers, upon request, reports that include high-level customer-specific order routing information, such as the identity of the venues to which the customer orders were routed for execution in the prior six months and the time of the transactions, if any, that resulted from such orders.[534] For orders submitted on a held basis, the reports required by Rule 606 do not contain any execution quality information.

When the Commission adopted the predecessor to Rule 606, it was intended to supply investors with information on where their orders are routed, which could be used along with information from Rule 605 about the quality of execution from the market centers to which their orders are routed in order to make more informed decisions with respect to their orders.[535] In theory, investors should be able to use Rule 606 reports to identify the market centers to which their broker-dealers are routing orders, and then use Rule 605 to estimate the execution quality offered by those market centers.[536] These market centers' aggregated execution quality metrics could then be used as a proxy for the execution quality that broker-dealers achieved for their customers' orders.

Following amendments to Rule 606 in 2018,[537] broker-dealers are subject to requirements under Rule 606 that provide information about the execution quality achieved by their broker-dealers for not held orders, which are typically used by institutional investors.[538] Specifically, 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.[539] These reports include aggregated execution quality metrics such as fill rate, percentage of shares executed at the midpoint, and percentages of total shares executed that were priced on the side of the spread more favorable to the order and on the side of the spread less favorable to the order.[540]

(c) Current Usage of Rule 605 Reports

Rule 605 data is currently used by some market participants, such as broker-dealers and investment advisers as part of their review of execution quality. However, the use of this data by both individual and institutional investors to directly evaluate and compare execution quality across market centers is currently limited.

(1) Usage of Rule 605 Reports by Individual Investors

It is likely that the extent to which individual investors directly access Rule 605 reports is currently limited. Several market participants have stated that Rule 605 reports have low usage among individual investors, including at least one commenter to the Commission's Concept Release on Equity Market Structure,[541] and some EMSAC committee members.[542]

Rule 605 reports are designed to be machine-readable, rather than human-readable. While machine-readable data is useful for facilitating further processing and analysis,[543] it is not readily usable by market participants and other interested parties that may prefer to review summary statistics, and is not easily consumable by market participants who do not have the access to necessary software or programming skills. This may limit the usability of Rule 605 reports for individual investors in particular, who are less likely to have access to these resources. In the Adopting Release, the Commission anticipated that, rather than individual investors obtaining and digesting Rule 605 reports themselves, independent analysts, consultants, broker-dealers, the financial press, and market centers would analyze the information and produce summaries that respond to the needs of investors.[544] Although the Commission is unable to observe the full extent to which this has occurred, some third parties have produced information based on Rule 605 reports that is meant for public consumption. For example, data obtained from Rule 605 reports are used by academics to study a variety of topics related to execution quality, including liquidity measurement, exchange competition, zero commission trading, and broker-dealer execution quality,[545] and at least one market participant used Rule 605 data in an analysis supporting its letter to the Commission commenting on one national securities exchange's registration application.[546] Rule 605 data is also used in the financial press.[547]

Unlike institutional investors,[548] individual investors typically have limited access to alternative sources of standardized execution quality information that could be used to compare across broker-dealers other than information obtained (directly or

[533] *See* 17 CFR 242.606(a)(1). *See also* corresponding discussion in section III.A, *supra.*

[534] *See* 17 CFR 242.606(a)(2). *See also* corresponding discussion in section III.A, *supra.*

[535] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75435 (''Rule 11Ac1–6 is designed to address the complementary need for broker-dealers to disclose to customers where their orders are routed for execution. The primary objective of the rule is to afford customers a greater opportunity to monitor their broker-dealer's order routing practices. Supplied with information on where their orders are routed, as well as information about the quality of execution from the market centers to which their orders are routed, investors will be able to make better informed decisions with respect to their orders. The information also may assist investors in selecting a broker-dealer.'').

[536] *See infra* section VII.C.2.(a)(1) for a discussion of current issues with using information from Rule 606 reports to infer the execution quality of broker-dealers.

[537] *See supra* note 60 and accompanying text for a discussion of these amendments.

[538] An analysis included in the 2018 Rule 606 Amendments Release looked at orders submitted from customer accounts of 120 randomly selected NMS stocks listed on NYSE during the sample period of December 5, 2016, to December 9, 2016, consisting of 40 large-cap stocks, 40 mid-cap stocks, and 40 small-cap stocks. The analysis found that among the orders received from the institutional accounts, about 69% of total shares and close to 39% of total number of orders in the sample are not held orders, whereas among the orders received from the individual accounts, about 19% of total shares and about 12% of total number of orders in the sample are not held orders. *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58393. *See also supra* note 56 and accompanying text, describing the Commission's understanding that held orders are typically used by individual investors.

[539] *See* 17 CFR 242.606(b)(3). In addition, Rule 606(b)(5)'s customer-level de minimis exception exempts broker-dealers from providing 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).

[540] *See* 17 CFR 242.606(b)(3)(ii).

[541] *See, e.g.,* Letter from Daniel Keegan, Managing Director, Citigroup Global Markets Inc. re Concept Release on Equity Market Structure (Release No. 34–61358; File No. S7–02–10) (May 5, 2010) (''Citigroup Letter II'') at 6.

[542] *See supra* note 112 and accompanying text.

[543] *See* discussion in *infra* section VII.C.1.(c)(2).

[544] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75419.

[545] *See, e.g.,* Ruslan Y. Goyenko, Craig W. Holden & Charles Trzcinka, *Do liquidity measures measure liquidity?* 92 J. Fin. Econ. 153 (2009); Edward D. Watson & Donovan Woods, *Exchange introduction and market competition: The entrance of MEMX and MIAX,* 54 Glo. Fin. J. (2022) 100756; Pankaj K. Jain, Suchismita Mishra, Shawn O'Donoghue & Le Zhao, *Trading Volume Shares and Market Quality: Pre-and Post-Zero Commissions* (working paper Dec. 2, 2020), *available at https://ssrn.com/abstract=3741470* SSRN 3741470 (retrieved from SSRN Elsevier database); Schwarz et al (2022).

[546] *See, e.g.,* Letter from David Weisberger, Managing Director, Markit, New York, New York Re: Investor's Exchange LLC Form 1 Application; Release No. 34–75925; File No. 10–222 (Feb. 16, 2016), *available at https://www.sec.gov/comments/10-222/10222-394.pdf.*

[547] *See, e.g.,* Bill Alpert ''Who Makes Money on Your Stock Trades,'' Barron's, Feb. 28, 2015 (retrieved from Factiva database) (stating that ''we ran each market maker's Rule 605 execution reports through statistical-analysis scripts that we wrote in the widely used open-source math software known as 'R.' '').

[548] *See* discussion in *infra* section VII.C.1.(c)(2).

indirectly) from Rule 605 reports.[549] The requirement in Rule 606(b)(3) for broker-dealers to provide individualized reports of execution quality to their customers upon request does not extend to held orders, which are mostly used by individual investors,[550] and contains a customer-level de minimis exception that likely excludes most individual investors.[551] In addition, many individual investors do not have access to the information or expertise required to calculate their own execution quality metrics, which makes it difficult for them to compare how execution quality varies across broker-dealers.[552]

One exception is the recent efforts by a few brokers-dealers and wholesalers to make available voluntary summary disclosures of execution quality in exchange-listed stocks for individual investors using the FIF Template.[553] Although the reports produced using the FIF Template may be useful, this disclosure is voluntary, and only a few firms are making or have made such disclosures. The Commission understands that only three retail brokers began producing reports using the FIF Template in 2015 on a quarterly basis, and that one of these broker-dealers was acquired and stopped producing these reports in 2017, and another stopped producing these reports in 2018, such that only one retail broker currently produces reports using the FIF Template.[554] Likewise, the Commission understands that there is currently only one wholesaler producing reports using the FIF Template.[555]

(2) Usage of Rule 605 Reports by Institutional Investors

The Commission preliminarily understands that, while the usage of Rule 605 reports by institutional investors may be limited by several factors, Rule 605 reports nevertheless contain information about execution quality that is otherwise useful for institutional investors.

First, institutional investors typically have access to alternative sources of execution quality information. Many institutional investors regularly conduct, directly or through a third-party vendor, transaction costs analysis (''TCA'') of their orders to assess execution quality against various benchmarks. Institutional investors that perform their own in-house analyses of execution quality or obtain analyses of execution quality from third-party vendors would be less likely to rely on information from Rule 605 reports in order to estimate the execution quality of their orders. Furthermore, the requirement in Rule 606(b)(3) for broker-dealers to provide individualized reports of execution quality of not held orders upon request,[556] which is most likely to be utilized by institutional investors,[557] provides institutional investors with another alternative source of information about the execution quality of their orders. While broker-dealers are currently required to provide their customers only with execution quality information about their not held orders under Rule 606(b)(3), which are not covered by Rule 605 reporting requirements, given the large size of most institutional investors and their business, institutional investors may have sufficient bargaining power such that broker-dealers have strong incentives to provide them with this information about the execution quality of their held orders when asked.

However, because Rule 605 reports are public, institutional investors can use these reports to assess the execution quality of the broker-dealers and market centers with which they do not currently do business. The information on execution quality that is individually collected by institutional investors is typically highly individualized and non-public.[558] Therefore, institutional investors would not be able to use these individualized reports to compare their broker-dealers' execution quality to that of broker-dealers with which they do not currently have a relationship, or to examine the execution quality of a market center to which their broker-dealers do not currently route orders. Furthermore, any ad hoc reports that institutional investors may receive from their broker dealers containing information about their held orders are unlikely to be sufficiently standardized to allow for easy comparisons across broker-dealers or market centers.

Second, Rule 605 reports only contain information about the execution quality of investors' held orders. Not held orders, which are excluded from the definition of ''covered order,'' [559] are excluded from Rule 605 metrics.[560] As many institutional orders tend to be not held,[561] this may limit the extent to which Rule 605 reports contain relevant information for institutional investors. Rule 605 reports may contain information that is relevant for institutional investors, however, as large institutional ''parent'' orders are often split into multiple smaller ''child'' orders, which may be handled as held orders and reflected in Rule 605 reports. This would allow institutional investors to use the information in Rule 605 reports to evaluate the performances of their broker-dealers. For example, institutional investors may incorporate information from Rule 605 reports into their TCA when evaluating the performance of their broker-dealers'

[549] There are also some broker-dealers that disclose their own execution quality metrics on their respective websites, but the disclosures are not standardized and tend to differ in ways that make them difficult to compare, such as reporting different metrics, using different methodologies, or different samples of stocks. *See supra* note 506.

[550] *See supra* note 538 describing an analysis showing that not held orders made up only 19% of total shares and about 12% of total number of orders among the sample of orders received from the individual accounts.

[551] *See supra* note 539 describing the customer-level de minimis exception of Rule 606(b)(5).

[552] *See infra* section VII.C.2.(a)(1) discussing several analyses that find significant differences in execution quality across retail brokers.

[553] *See supra* note 450 and accompanying text for further discussion of the FIF Template.

[554] *See Retail Execution Quality Statistics,* Financial Information Forum, *available at https://fif.com/tools/retail-execution-quality-statistics; Retail Execution Quality Statistics Q2—2022,* Fidelity, *available at https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/FIF-FBS-retail-execution-quality-stats.pdf.*

[555] *See Retail Execution Quality Statistics,* Financial Information Forum, *available at https://fif.com/tools/retail-execution-quality-statistics; Retail Execution Quality Statistics—Wholesale Market Maker Perspective,* Two Sigma, *available at https://www.twosigma.com/businesses/securities/execution-statistics/.* The Commission is aware of at least two wholesalers that formerly produced reports using the FIF Template, but stopped in Q3 2019.

[556] *See supra* Section VIII.C.1.(b) discussing broker-dealer reporting requirements under Rule 606.

[557] *See supra* note 538 discussing an analysis showing that institutional investors are more likely than individual investors to use not held orders. *See also supra* note 539 describing the customer-level de minimis exception of Rule 606(b)(5).

[558] In 2018, the Commission proposed but ultimately did not adopt a requirement that broker-dealers that handle orders subject to the customer-specific disclosures required by Rule 606(b)(3) issue a quarterly public aggregated disclosure on order handling. *See* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58369.

[559] Currently there are no requirements for aggregated information about the execution quality of not held orders to be made public. The Commission believes that the potential ability for customers and broker-dealers to use aggregated order handling information for not held orders to better understand broker-dealers' routing behavior or compare broker-dealers' order routing performance is limited as a result of the disparate behavior of customers when using not held orders. *See, e.g.,* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58369–70, in which the Commission stated that, in contrast to held orders, not held order flow is diverse and customers may provide specific order handling instructions to their broker-dealers, limit the order handling discretion of their broker-dealers, or have specific needs that impact the broker-dealers' handling of these orders. *See also supra* note 63 for further discussion.

[560] *See supra* note 60 and accompanying text discussing broker-dealers requirements under Rule 606(b)(3) to provide individualized reports of execution quality upon request for not held orders.

[561] *See supra* note 538 discussing an analysis showing that institutional investors are more likely than individual investors to use not held orders.

Smart Order Router (''SOR'') algorithms.[562]

The Commission believes that, due to their typically larger resources, institutional investors may be more likely than individual investors to access Rule 605 reports directly. Rule 605 reports are machine-readable, which makes them useful for facilitating further processing and analysis by market participants that have access to the resources necessary for handling large amounts of raw data, such as many institutional investors. However, the Commission understands some institutional investors may currently use aggregated statistics or summaries of Rule 605 reports prepared by third parties, who make these reports available, possibly for a fee.

(3) Other Users of Rule 605 Reports

While the direct usage of Rule 605 reports by individual and institutional investors is likely limited, Rule 605 reports are currently used by other market participants, including analysts and researchers,[563] as well as financial service providers, such as investment advisers and broker-dealers, that are subject to best execution obligations.

In particular, the Commission understands that investment advisers and broker-dealers typically use Rule 605 reports as part of their internal review of execution quality. As fiduciaries, investment advisers owe their clients a duty of care and a duty of loyalty.[564] The duty of care includes, among other things, the duty to seek best execution of a client's transactions where the investment adviser has the responsibility to select broker-dealers to execute client trades.[565] Broker-dealers also have an obligation to seek best execution of customer orders.[566] The Commission understands that these financial service providers often have Best Execution Committees that periodically review order execution quality, and typically use Rule 605 reports as part of their review.[567]

(d) Rules Addressing Consolidated Market Data

In 2020, the Commission adopted a new rule and amended existing rules to establish a new infrastructure for consolidated market data,[568] and the regulatory baseline includes these changes to the current arrangements for consolidated market data. However, as discussed in more detail below, the MDI Rules have not been implemented, and so they have not yet affected market practice. As a result, the data used to measure the baseline below reflects the regulatory structure in place for consolidated market data prior to the implementation of the MDI Rules. Accordingly, this section first will briefly summarize the regulatory structure for consolidated market data prior to the implementation of the MDI Rules. It then will discuss the current status of the implementation of the MDI Rules and provide an assessment of the potential effects that the implementation of the MDI Rules could have on the baseline estimations.

(1) Regulatory Structure for Consolidated Market Data Prior to the MDI Rules

Consolidated market data is made widely available to investors through the national market system, a system set forth by Congress in section 11A of the Exchange Act [569] and facilitated by the Commission in Regulation NMS.[570] Market data is collected by exclusive SIPs,[571] which consolidate that information and disseminate an NBBO and last sale information. For quotation information, only the 16 national securities exchanges that currently trade NMS stocks provide quotation information to the SIPs for dissemination in consolidated market data.[572] FINRA has the only SRO display-only facility (the Alternative Display Facility, or ADF). No broker-dealer, however, currently uses it to display quotations in NMS stocks in consolidated market data. Disseminated quotation information includes each exchange's current highest bid and lowest offer and the shares available at those prices, as well as the NBBO.

For transaction information, currently all of the national securities exchanges that trade NMS stocks and FINRA provide real-time transaction information to the SIPs for dissemination in consolidated market data. Such information includes the symbol, price, size, and exchange of the transaction, including odd-lot transactions.

(2) Unimplemented Market Data Infrastructure Rules

Among other things, the unimplemented MDI Rules update and expand the content of consolidated market data to include: (1) certain odd-lot information; [573] (2) information about certain orders that are outside of an exchange's best bid and best offer (*i.e.,* certain depth of book data); [574] and (3) information about orders that are participating in opening, closing, and

[562] *See infra* section VII.C.3.(a)(1)(b) discussing the use of SORs by broker-dealers to split a large institutional ''parent'' order into multiple ''child'' orders in a way that achieves the best execution for the parent order.

[563] *See, e.g., supra* notes 545–547, describing the use of Rule 605 data in academic literature, in comment letters related to Commission and SRO rulemaking, and the financial press.

[564] *See* Investment Advisers Act Release No. 5248 (June 5, 2019), 84 FR 33669 (July 12, 2019) (Commission Interpretation Regarding Standard of Conduct for Investment Advisers) (''IA Fiduciary Interpretation'').

[565] *See, e.g.,* Investment Advisers Act Rule 206(3)–2(c). The Commission previously has described the contours of an investment adviser's duty to seek best execution. IA Fiduciary Interpretation, 84 FR 33669 (Jul. 12, 2019) at 33674–75. In addition, the Commission has brought a variety of enforcement actions against registered investment advisers in connection with their alleged failure to satisfy their duty to seek best execution. *See, e.g., In the Matter of Aventura Capital Management, LLC,* Investment Advisers Act Release No. 6103 (Sept. 6, 2022) (settled action); *In the Matter of Madison Avenue Securities, LLC,* Investment Advisers Act Release No. 6036 (May 31, 2022) (settled action).

[566] *See supra note* 69 and accompanying text for further discussion of broker-dealers' best execution requirements.

[567] *See, e.g., Practical Considerations for Your 'Best Execution Compliance Program',* Ernst & Young (Mar. 2017), *available at http://documents.sifma.org/uploadedFiles/Events/2017/Compliance_and_Legal_Society_Annual_Seminar/EY_CL%20Annual_Marketing%20PDF.pdf* (stating the broker-dealers rely on ''traditional 605 metrics'' for best execution review). *See also* Citigroup Letter II at 7 (stating that, ''under the current market structure, broker-dealers closely review and analyze Rule 605 statistics as part of their regular and rigorous review for best execution'').

[568] *See supra* section IV.B.5, discussing the MDI Rules.

[569] *See supra* note 3 and accompanying text.

[570] 17 CFR 242.600 through 242.614.

[571] *See supra* note 195 and accompanying text.

[572] Currently, these national securities exchanges are: Cboe BYX Exchange, Inc. (''Cboe BYX''); Cboe BZX Exchange, Inc. (''Cboe BZX''); Cboe EDGA Exchange, Inc. (''Cboe EDGA''); Cboe EDGX Exchange, Inc. (''Cboe EDGX''); Investors Exchange LLC (''IEX''); Long-Term Stock Exchange, Inc. (''LTSE''); MEMX LLC (''MEMX''); MIAX Pearl, LLC (''MIAX PEARL''); Nasdaq BX, Inc. (''Nasdaq BX''); Nasdaq PHLX LLC (''Nasdaq Phlx''); The Nasdaq Stock Market LLC (''Nasdaq''); NYSE; NYSE American LLC (''NYSE American''); NYSE Arca, Inc. (''NYSE Arca''); NYSE Chicago, Inc. (''NYSE CHX''); and NYSE National, Inc. (''NYSE National''). The Commission approved rules proposed by BOX Exchange LLC (''BOX'') for the listing and trading of certain equity securities that would be NMS stocks on a facility of BOX known as BSTX LLC (''BSTX''), but BSTX is not yet operational. *See* Securities Exchange Act Release Nos. 94092 (Jan. 27, 2022), 87 FR 5881 (Feb. 2, 2022) (SR–BOX–2021–06) (approving the trading of equity securities on the exchange through a facility of the exchange known as BSTX); 94278 (Feb. 17, 2022), 87 FR 10401 (Feb. 24, 2022) (SR–BOX–2021–14) (approving the establishment of BSTX as a facility of BOX). BSTX cannot commence operations as a facility of BOX until, among other things, the BSTX Third Amended and Restated Limited Liability Company Agreement approved by the Commission as rules of BOX is adopted. *Id.* at 10407.

[573] *See supra* note 422 and accompanying text for further discussion of changes to the availability of odd-lot information under the MDI Rules.

[574] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18625.

other auctions.[575] The Rules also introduce a four-tiered definition of round lot that is tied to a stock's average closing price during the previous month.[576] For stocks with prices greater than $250, a round lot is defined as consisting of between 1 and 40 shares, depending on the tier.[577] The MDI Rules also introduce a decentralized consolidation model under which competing consolidators, rather than the existing exclusive SIPs, will collect, consolidate, and disseminate certain NMS information.[578]

In the MDI Adopting Release, the Commission established a transition period for the implementation of the MDI Rules.[579] The ''first key milestone'' for the transition period was to be an ''amendment of the effective national market system plan(s),'' which ''must include the fees proposed by the plan(s) for data underlying'' consolidated market data (''Proposed Fee Amendment'').[580] The compliance date for the Infrastructure Rules was set with reference to the date that the Commission approved the Proposed Fee Amendment.[581] The end of the transition period was to be at least two years after the date the Commission approved the Proposed Fee Amendment.[582]

The MDI Adopting Release did not specify a process for continuing the transition period if the Commission disapproved the Proposed Fee Amendment. On September 21, 2022, the Commission disapproved the Proposed Fee Amendment, because the Participants had not demonstrated that the proposed fees were fair, reasonable and not unreasonably discriminatory.[583] Accordingly, there currently is no date to begin the at-least-two-year period for implementation of the MDI Rules, and there is no date that can be reasonably estimated for the implementation of the MDI Rules to be completed.

Given that the MDI Rules have not yet been implemented, they have not affected market practice and therefore data that would be required for a comprehensive quantitative analysis of a baseline that includes the effects of the MDI Rules is not available. It is possible that the baseline (and therefore the economic effects relative to the baseline) could be different once the MDI Rules are implemented. The following discussion reflects the Commission's assessment of the anticipated economic effects of the MDI Rules described in the MDI Adopting Release as they relate to the baseline for this proposal.[584]

The Commission anticipated that the new round lot definition will result in narrower NBBO spreads for most stocks with prices greater than $250 because, for these stocks, fewer odd-lot shares will need to be aggregated together (possibly across multiple price levels[585]) to form a round lot and qualify for the NBBO.[586] The reduction in spreads will be greater in higher-priced stocks because the definition of a round lot for these stocks will include fewer shares, such that even fewer odd-lot shares will need to be aggregated together.[587] This could cause statistics that are measured against the NBBO to change because they will be measured against the new, narrower NBBO. For example, execution quality statistics on price improvement for higher-priced stocks may show a reduction in the number of shares of marketable orders that received price improvement because price improvement will be measured against a narrower NBBO. In addition, the Commission anticipated that the NBBO midpoint in stocks priced higher than $250 could be different under the MDI Rules than it otherwise would be, resulting in changes in the estimates for statistics calculated using the NBBO midpoint, such as effective spreads. In particular, at times when bid odd-lot quotations exist within the current NBBO but no odd-lot offer quotations exist (and vice versa), the midpoint of the NBBO resulting from the rule will be higher than the current NBBO midpoint.[588] More broadly, the Commission anticipated that the adopted rules will have these effects whenever the new round lot bids do not exactly balance the new round lot offers. However, the Commission stated that it does not know to what extent or direction such odd-lot imbalances in higher priced stocks currently exist, so it is uncertain of the extent or direction of the change.[589]

The Commission also anticipated that the MDI Rules could result in a smaller number of shares at the NBBO for most stocks in higher-priced round lot tiers.[590] To the extent that this occurs, there could be an increase in the frequency with which marketable orders must walk the book to execute. This would affect statistics that are calculated using consolidated depth information, such as measures meant to capture information about whether orders received an execution of more than the displayed size at the quote, *i.e.,* ''size improvement.''

The MDI Rules may also result in a higher number of odd-lot trades, as the inclusion of odd-lot quotes that may be priced better than the current NBBO in consolidated market data may attract more trading interest from market participants that previously did not have access to this information.[591] However, the magnitude of this effect depends on the extent to which market participants who rely solely on SIP data and lack information on odd-lot quotes choose to receive the odd-lot information and trade on it. The Commission states in the MDI Adopting

[575] *See id.* at 18630.

[576] *See id.* at 18617.

[577] *See id.* The Commission adopted a four-tiered definition of round lot: 100 shares for stocks priced $250.00 or less per share, 40 shares for stocks priced $250.01 to $1,000.00 per share, 10 shares for stocks priced $1,000.01 to $10,000.00 per share, and 1 share for stocks priced $10,000.01 or more per share.

[578] *See id.* at 18637.

[579] *See id.* at 18698–18701.

[580] *See id.* at 18699.

[581] *See, e.g., id.* at 18700 n. 355 (compliance date for amendment to Rule 603(b) to be ''180 calendar days from the date of the Commission's approval of the amendments to the effective national market system plan(s)'').

[582] *See id.* at 18700–18701 (specifying consecutive periods of 90 days, 90 days, 90 days, 180 days, 90 days, a period for filing and approval of another national market system plan amendment to effectuate the cessation of the operations of the SIPS (with a 300-day maximum time for Commission action after filing to approve or disapprove the filing), and a 90-day period).

[583] Securities Exchange Act Release No. 95851 (Sept. 21, 2022) (Order Disapproving the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan).

[584] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18741–18799.

[585] The calculation of the NBBO includes odd-lots that, when aggregated, are equal to or greater than a round lot. Under CFR 242.600(b)(21)(ii), ''such aggregation shall occur across multiple prices and shall be disseminated at the least aggressive price of all such aggregated odd-lots.'' For example, if there is one 50-share bid at $25.10, one 50-share bid at $25.09, and two 50-share bids at $25.08, the odd-lot aggregation method would show a protected 100-share bid at $25.09.

[586] For example, if there is one 20-share bid at $250.10, one 20-share bid at $250.09, and two 50-share bids at $250.08, prior to MDI the NBB would be $250.08, as even aggregated together the odd lot volume would not add up to at least a round lot. After MDI, the NBB would be $25.09, as the odd-lot aggregation method would show a protected 40-share round lot bid at $25.09.

[587] *See supra* note 577. An analysis in the MDI Adopting Release showed that the new round lot definition caused a quote to be displayed that improved on the current round lot quote 26.6% of the time for stocks with prices between $250.01 and $1,000, and 47.7% of the time for stocks with prices between $1,000.01 and $10,000. *See* MDI Adopting Release, 86 FR at 18743.

[588] For example, if the NBB is $260 and the NBO is $260.10, the NBBO midpoint is $260.05. Under the adopted rules a 40 share buy quotation at $260.02 will increase the NBBO midpoint to $260.06. Using this new midpoint, calculations of effective spread will be lower for buy orders, but will be higher for sell orders.

[589] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18750.

[590] However, this effect will depend on how market participants adjust their order submissions. *See id.* at 18746 for further discussion.

[591] *See id.* at 18754.

Release that it believes it is not possible to observe this willingness to trade with existing market data.[592]

The MDI Rules may have implications for broker-dealers' order routing practices. For those market participants that rely solely on SIP data for their routing decisions and that choose to receive the expanded set of consolidated market data, the Commission anticipated that the additional information contained in consolidated market data will allow them to make more informed order routing decisions. This in turn would help facilitate best execution, which would reduce transaction costs and increase execution quality.[593]

The MDI Rules may also result in differences in the baseline competitive standing among different trading venues, for several reasons. First, for stocks with prices greater than $250, the Commission anticipated that the new definition of round lots may affect order flows as market participants who rely on consolidated data will be aware of quotes at better prices that are currently in odd-lot sizes, and these may not be on the same trading venues as the one that has the best 100 share quote.[594] Similarly, it anticipated that adding information on odd-lot quotes priced at or better than the NBBO to expanded core data may cause changes to order flow as market participants take advantage of newly visible quotes.[595] However, the Commission stated that it was uncertain about the magnitude of both of these effects.[596] To the extent that it occurs, a change in the flow of orders across trading venues may result in differences in the competitive baseline in the market for trading services.

Second, national securities exchanges and ATSs have a number of order types that are based on the NBBO, and so the Commission anticipated that the changes in the NBBO caused by the new round lot definitions may affect how these order types perform and could also affect other orders with which they interact.[597] The Commission stated that these interactions may affect relative order execution quality among different trading platforms, which may in turn affect the competitive standing among different trading venues, with trading venues that experience an improvement/decline in execution quality attracting/losing order flow.[598] However, the Commission stated that it was uncertain of the magnitude of these effects.[599]

Third, the Commission anticipated that, as the NBBO narrows for securities in the smaller round lot tiers, it may become more difficult for the retail execution business of wholesalers to provide price improvement and other execution quality metrics at levels similar to those provided under a 100 share round lot definition.[600] To the extent that wholesalers are held to the same price improvement standards by retail brokers in a narrower spread environment, the wholesalers' profits from executing individual investor orders might decline,[601] and to make up for lower revenue per order filled in a narrower spread environment, wholesalers may respond by changing how they conduct their business in a way that may affect retail brokers. However, the Commission stated that it was uncertain as to how wholesalers may respond to the change in the round lot definition, and, in turn, how retail brokers may respond to those changes, and so was uncertain as to the extent of these effects.[602] If wholesalers do change how they conduct business, it may impact wholesalers' competitive standing in terms of the execution quality offered, particularly to individual investor orders.

Where implementation of the above-described MDI Rules may affect certain numbers in the baseline, the description of the baseline below notes those effects.

2. Current Rule 605 Disclosure Requirements

The Commission believes that there are several areas where market participants' current access to information about execution quality under Rule 605 could be improved. Specifically, currently broker-dealers that are not market centers are not required to report under Rule 605, which limits market participants' ability to assess and compare the execution quality that broker-dealers obtain for their customers. Furthermore, changes in equity market conditions and technological advancements since the Rule was adopted in 2000, such as an increase in the speed of trading, have decreased the relevance of some of the information contained in Rule 605 reports.[603]

(a) Scope of Reporting Entities Under Current Rule 605 Reporting Requirements

The current scope of entities that are required to report under Rule 605 does not include broker-dealers that only route customer orders externally, rather than executing customer orders internally, because they do not meet the definition of market center. As a result, it is difficult for market participants to use the execution quality statistics that are currently available to compare execution quality across these broker-dealers. Furthermore, to the extent that firms that operate two separate market centers co-mingle execution quality information about multiple market centers in Rule 605 reports, this would make it difficult for market participants to assess the execution quality of each market individually.

(1) Broker-Dealers

Currently, broker-dealers that are not market centers are not required to prepare Rule 605 reports,[604] which the Commission believes limits market participants' ability to assess and compare the execution quality that broker-dealers obtain for their customers.

Rule 605 and Rule 606 operate together to allow investors to evaluate what happens to their orders after the investors submit their orders to a broker-dealer for execution.[605] If a market center's Rule 605 reports are representative of the aggregate execution quality that any given broker-dealer receives from that market center, then a customer of a broker-dealer can use that broker-dealer's Rule 606 reports to identify the venues to which the broker-dealer regularly routes orders for execution and use Rule 605 reports to get information on aggregate order

[592] *See id.*

[593] *See id.* at 18725.

[594] *See id.* at 18744.

[595] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18754.

[596] *See id.* at 18745, 18754.

[597] *See id.* at 18748.

[598] *See id.*

[599] *See id.*

[600] *See id.* at 18747.

[601] Individual investor orders typically feature lower adverse selection than other types of orders, such as institutional orders. *See infra* note 608 and accompanying text, describing how it is generally more profitable for any liquidity provider, including wholesalers, to execute against orders with lower adverse selection risk.

[602] *See* MDI Adopting Release, 86 FR 18596 (Apr. 9, 2021) at 18748.

[603] *See supra* notes 12–16 and accompanying text for further discussion.

[604] A broker-dealer may currently be subject to Rule 605 reporting requirements to the extent that the broker-dealer is acting as or operates a market center. However, such reports are required to cover only the orders that the broker-dealer handled within its capacity as a market center. *See supra* notes 179–180 and accompanying text.

[605] *See supra* note 141 and accompanying text.

execution quality at those market centers.[606] However, if broker-dealers receive different execution quality from a given market center, combining Rule 606 and Rule 605 data would not be informative about the execution quality of individual broker-dealers' average execution quality. This is because, since a market center's Rule 605 report is aggregated across all of its broker-dealer customers, it is not possible to determine how execution quality varies across broker-dealers at a particular market center.[607]

To explore this idea, an analysis was performed examining whether wholesalers, which know the identities of the broker-dealers who route orders to them, provide different execution quality to different broker-dealers because of differences in characteristics of their order flows: specifically, adverse selection risk. All else equal, it is generally more profitable for any liquidity provider, including wholesalers, to execute against orders with lower adverse selection risk, due to the reduced risk that prices will move against the liquidity provider.[608] Therefore, wholesalers may provide better execution quality to retail brokers whose order flow exhibits lower adverse selection risk, *e.g.,* in order to attract further order flow from that retail broker. Accordingly, a sample of CAT data[609] between January 1, 2022 and March 31, 2022 in NMS common stocks and ETFs was evaluated to see if execution quality[610] that retail brokers received from wholesalers differed based on the adverse selection risk of the broker-dealers' order flow,[611] as measured using price impact.[612] Retail brokers were grouped into quintiles based on the weighted average percentage price impact of their order flow.

Table 3 shows that the execution quality that retail brokers received from wholesalers systematically decreases as the adverse selection risk of their order flow increases, such that retail brokers with orders with higher average adverse selection risk systematically receive worse execution quality in the form of higher average percentage effective half-spreads and higher average E/Q ratios (*i.e.,* lower price improvement) as

[606] *See supra* section VII.C.1.(b) for a discussion of broker-dealers' current reporting requirements under Rule 606.

[607] For example, consider two broker-dealers, Broker-Dealer 1 and Broker-Dealer 2, which both route orders to a market center (''Market Center A'') according to these broker-dealers' Rule 606 reports. Assume that the orders routed by Broker-Dealer 1 receive consistently below-average execution quality from the wholesaler, while the orders routed by Broker-Dealer 2 receive consistently above-average execution quality. If a customer of Broker-Dealer 1 were to examine Market Center A's Rule 605 report to get a sense of the average execution quality that their Broker-Dealer achieves for their orders, the customer would see only the execution quality statistics aggregated across Broker-Dealers 1 and 2, which would likely reveal that Market Center A offers about average levels of execution quality. However, this would not reveal the worse execution quality that Broker-Dealer 1, and therefore the customer of Broker-Dealer 1, is receiving from the market center.

[608] *See, e.g.,* David Easley, Nicholas M. Kiefer & Maureen O'Hara, *Cream-skimming or profit-sharing? The curious role of purchased order flow,* 51 J. Fin. 811 (1996).

[609] This Commission analysis uses CAT data to examine the execution quality of marketable orders in NMS Common stocks and ETFs that belonged to accounts with a CAT account type of ''Individual Customer'' and that originated from a broker-dealer MPID that originating orders from 10,000 or more unique ''Individual Customer'' accounts during January 2022. The number of unique ''Individual Customer'' accounts associated with each MPID was calculated as the number for unique customer account identifiers with an account customer type of ''Individual Customer'' that originated at least one order during the month of January 2022. Fifty-eight (58) broker-dealer MPIDs were associated with retail brokers originated orders from 10,000 or more unique Individual Customer accounts in January 2022. Account type definitions are available in Appendix G to the CAT Reporting Technical Specifications for Industry Members (*https://catnmsplan.com/*), under 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'' may not be limited to individual investors because it includes natural persons as well as corporate entities that do not meet the definitions for other account types. The Commission restricted that analysis to MPIDs that originated orders from 10,000 or more ''Individual Customer'' accounts in order to ensure that these MPIDs are likely to be associated with retail brokers to help ensure that the sample is more likely to contain marketable orders originating from individual investors.

[610] Measures of execution quality in this analysis include the percentage effective half-spread and the average E/Q ratio. Percentage effective half-spread is the weighted average of the percentage effective half spread (measured as (execution price—NBBO midpoint at time of order receipt)/NBBO midpoint at time of order receipt). E/Q ratio is the weighted average of the ratio of each transaction's effective spread divided by its quoted spread at the time of order receipt. Time of order receipt is defined as the time the wholesaler first receives the order. The NBBO is based on consolidated market data feed. Weighted averages are calculated by calculating the share weighted value at the individual stock level over the sample (*i.e.,* weighting at the stock level based on the number of shares executed for transactions in the individual stock) and then weighting across stocks based on their total dollar transaction volume during the sample period (*i.e.,* using the stock's total dollar trading volume as the weight when averaging the share weighted average stock values).

[611] The analysis employed filters to clean the data and account for potential data errors. Retail brokers' fractional share orders with share quantity less than one share were excluded from the analysis. The analysis included market and marketable limit orders that were under $200,000 in value and that originated from one the 58 retail broker MPIDs and were received by a market center that was associated with one of the six wholesalers CRD numbers (FINRA's Central Registration Depository number) during some point in the order's lifecycle. Orders that were received by the wholesaler or executed outside of normal market hours were excluded. Orders were also excluded if they had certain special handling codes so that execution quality statistics would not be skewed by orders being limited in handling by special instructions (*e.g.,* pegged orders, stop orders, post only orders, etc.) Orders identified in CAT as Market and Limit orders with no special handling codes or one of the following special handling codes were included in the analysis: NH (not held), CASH (cash), DISQ (display quantity), RLO (retail liquidity order), and DNR (do not reduce). These special handling codes were identified based on their common use by retail brokers and descriptions of their special handling codes. The marketability of a limit order was determined based on the consolidated market data feed NBBO at the time a wholesaler first receives the order. Limit orders that were not marketable were excluded. The dollar value of an order was determined by multiplying the order's number of shares by either its limit price, in the case of a limit order, or by the midpoint of the consolidated market data feed NBBO at the time the order was first received by a wholesaler, in the case of a market order. The analysis includes NMS Common Stocks and ETFs (identified by security type codes of 'A' and 'ETF' in NYSE TAQ data) that are also present in CRSP data from CRSP 1925 US Indices Database and CRSP 1925 US Stock Database, Ctr. Rsch. Sec. Prices, U. Chi. Booth Sch. Bus. (2022). Price improvement, effective spreads, realized spreads, quoted spreads, and price impacts were winsorized if they were greater than 20% of a stock's VWAP during a stock-week.

[612] By measuring the difference between the transaction price and the prevailing market price some fixed period of time after the transaction (*e.g.,* one minute), price impact measures the extent of adverse selection costs faced by a liquidity provider. For example, if a liquidity provider provides liquidity by buying shares from a trader who wants to sell, thereby accumulating a positive inventory position, if the liquidity provider wants to unwind this inventory position by selling shares in the market, they will incur a loss if the price has fallen in the meantime. In this case, the price impact measure will be positive, reflecting the liquidity provider's exposure to adverse selection costs. In this analysis, percentage price impact is the weighted average of the percentage one minute price impact half spread (measured as (NBBO midpoint one minute after execution—NBBO midpoint at time of order receipt)/NBBO midpoint at time of order receipt). *See supra* note 610 for a definition of the time of order receipt and information about how weighted averaged were calculated in this analysis.

[613] This analysis uses data from prior to the implementation of the MDI Rules and specific numbers may differ following the implementation of the MDI Rules. In particular, for stocks with prices over $250, quoted spreads and price improvement statistics are expected to narrow because they will be measured against a narrower NBBO. The effects on effective spread, price impact, and realized spread statistics in these stocks is uncertain, because they are measured against the NBBO midpoint, and the Commission is uncertain how this will be affected. *See supra* section VII.C.1.(d)(2). However, the Commission does not anticipate that the existence of a negative relation between the retail brokers' adverse selection risk and the execution quality that they receive from wholesalers described here would be affected by the implementation of the MDI Rules.

compared to broker-dealers with orders with lower average adverse selection risk.[613] This highlights that wholesalers provide different execution quality to different retail brokers, in this case depending on the adverse selection risk of their orders. This is likely to have a large effect on the execution quality received by retail brokers, as an analysis of Rule 606 data found that retail brokers route more than 87% of the individual investor orders that they handle to wholesalers.[614] However, since a wholesaler's Rule 605 report is aggregated across all of its broker-dealer customers, this variation in execution quality across retail brokers cannot be determined by matching its Rule 605 report to broker-dealers' routing information from their Rule 606 reports.

TABLE 3—AVERAGE WHOLESALER EXECUTION QUALITY RECEIVED BY RETAIL BROKER QUINTILES, JANUARY–MARCH 2022

Broker-dealer quintile	Percentage price impact (bps)	Percentage effective half-spread (bps)	E/Q ratio
1	−1.04	2.86	0.43
2	0.48	1.87	0.46
3	0.79	2.15	0.48
4	1.32	3.48	0.61
5	3.85	7.24	0.88

Table 3: Average Wholesaler Execution Quality Received by Retail Broker Quintiles, January–March 2022. This table summarizes how execution quality varies in NMS Common Stocks and ETFs based on a retail broker MPID's price impact by grouping 58 retail broker MPIDs identified according to the procedure described in *supra* note 609 in NMS Common Stocks and ETFs into quintiles based on their average price impact. Each retail broker MPID's price impact is determined by share weighting its average percentage price impact half spread within an individual NMS common stock or ETF and then averaging across stocks using the weighting of the dollar volume the retail broker executed in each security (dollar volume weighted); this measure of price impact is then used to sort retail broker MPIDs into quintiles. Within each quintile, average percentage price impacts, percentage effective half-spreads, and E/Q ratios are calculated as described in *supra* notes 610 and 612. *See supra* note 609 for dataset description and *supra* note 611 for details on the sample and filters used in this analysis. This analysis uses data from prior to the implementation of the MDI Rules and specific numbers may differ following the implementation of the MDI Rules. *See supra* note 613 and section VII.C.1.(d).

(2) Reporting Entities That Operate SDPs

When a market center also operates a SDP, co-mingling SDP activity with other market center activity may obscure or distort information about the market center's execution quality in their Rule 605 reports, making it more difficult for market participants to observe the execution quality of each separate trading venue. SDPs are sometimes called ''ping pools,''[615] reflecting that institutional investors use these venues to ''ping'' (*i.e.,* submit a small order in search of hidden liquidity) SDPs, often using Immediate or Cancel (IOC) orders. IOC orders typically have different execution profiles than other types of orders, including lower fill rates.[616] Combining information on orders submitted to a market center's SDP along with its other orders will therefore effect a downwards skew on the market center's fill rates, and analogously an upward skew on the SDP's fill rates. This may particularly be the case for wholesalers who combine the orders submitted to their SDP with orders that are internalized or executed on a riskless principal basis,[617] since SDP activity represents a significant portion of their trading volume.[618] Also, since the information on executions in SDPs largely reflects institutional orders, combining information on SDP orders along with other orders would tend to obscure information that is particularly relevant for institutional investors or broker-dealers handling institutional investors' orders in assessing differences across these market centers. To the extent that institutional investors are less able to observe and compare differences in execution quality across market centers as a result, this may reduce incentives for these market centers to compete for institutional investor orders on the basis of execution quality.

(b) Coverage of Orders Under Current Rule 605 Reporting Requirements

The Commission believes that current Rule 605 reporting requirements exclude execution quality information about some order sizes and types that are relevant to market participants.

To estimate the percentage of shares that are currently excluded from Rule 605 reporting requirements and the driving factor behind their exclusions (*i.e.,* whether they are excluded based on their submission time, type, or size), data from the Tick Size Pilot B.I Market

[614] These numbers are based on an analysis of the percentage of market orders, marketable limit orders, non-marketable limit orders, and other orders that 46 retail brokers route to different types of venues in Q1 2022 based on their Rule 606 reports. Consistent with Rule 606, routing statistics are aggregated together in Rule 606 reports based on whether the stock is listed in the S&P 500 index. The 46 broker-dealers were identified from the 58 retail brokers identified according to the procedure described in *supra* note 609. This analysis uses the retail broker's 606 report if they publish one, or the Rule 606 report of their clearing broker if they did not produce a Rule 606 report themselves (the sample of 46 broker-dealer Rule 606 reports include some broker-dealers that were not included in the CAT retail analysis because some clearing broker Rule 606 reports are included). Some broker-dealers reported handling orders only on a not held basis and did not have any Rule 606 reports. Because Rule 606 only include percentages of where their order flow is routed and not statistics on the number of orders, the reports are aggregated together using a weighting factor based on an estimate of the number of non-directed orders each broker-dealer routes in each security type each month. The number of non-directed orders is estimated separately for S&P 500 and non-S&P 500 stocks by dividing the number of non-directed market orders originating from a retail broker in each stock type in a given month, which is estimated from CAT data, by the percentage of market orders as a percent of non-directed orders in the retail broker's Rule 606 report for that stock type in the same month (the weight for a clearing broker consists of the aggregated orders from the introducing brokers in the CAT analysis that utilize that clearing broker). The resulting statistics show that broker-dealers routed 87.3% of orders in S&P 500 stocks and 87.9% of orders in non-S&P 500 stocks to wholesalers, as compared to 9.1% and 8.5%, respectively, to national securities exchanges.

[615] *See, e.g.,* Annie Massa, *Trader VIP Clubs, 'Ping Pools' Take Dark Trades to New Level,* Bloomberg, (Jan. 16, 2018, 5:00 a.m.), *available at https://www.bloomberg.com/news/articles/2018-01-16/trader-vip-clubs-ping-pools-take-dark-trades-to-new-level#xj4y7vzkg.*

[616] *See infra* section VII.C.2.(c)(7) for discussion of differences between marketable IOC order executions and the executions of other marketable order types.

[617] *See infra* section VII.C.2.(c)(8) for a discussion on how the treatment of wholesalers' riskless principal trades in Rule 605 reports may also obscure information on execution quality.

[618] *See infra* note 769 and accompanying text, describing that the combined trading volume of the affiliated SDPs of the two most active wholesalers accounted for over 4% of total U.S. consolidated trading volume in 2021.

Quality dataset,[619] which had much broader reporting requirements than Rule 605,[620] was analyzed for a period from April 2016 to March 2019. As a first step, approximately 25% of orders are estimated to be excluded from Rule 605 requirements as they are flagged as having special handling requests. A breakdown of the remaining submitted share volume (*i.e.,* after excluded special handling orders) is presented in Figure 2, and shows that around 2.2% of shares are currently excluded from Rule 605 reporting requirements due to having effective times outside of regular trading hours. A further 51.6% of shares are excluded because they were of an order type that is currently excluded from Rule 605 reporting requirements.[621] An additional 11.3% of the remaining order volume are excluded from Rule 605 coverage because of the exclusion of orders less than 100 shares and larger-sized orders. This leaves only around a third of share volume that is currently eligible to be included in Rule 605.[622]

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Figure 2: Rule 605 Coverage, by Submission Time, Order Type, and Order Size, April 2016–March 2019

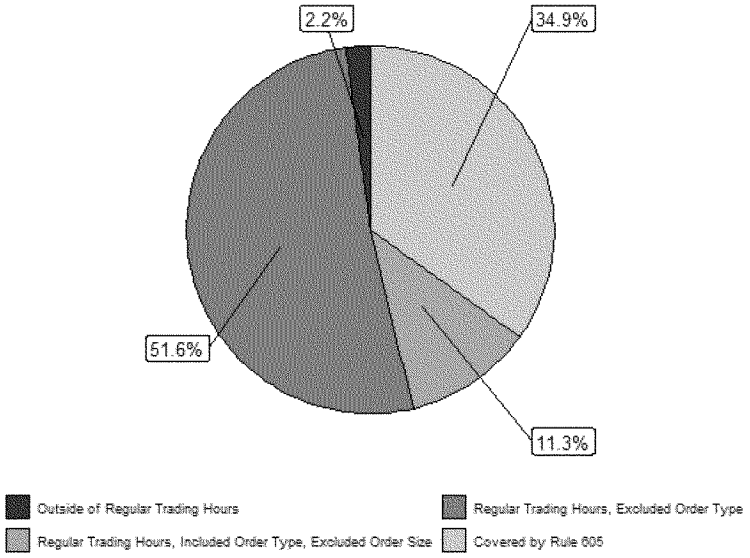

Figure 2: Rule 605 Coverage, by Submission Time, Order Type, and Order Size, April 2016 – March 2019. This figure shows the additional percentage of orders that are excluded from Rule 605 reporting requirements after the sequential addition of various exclusions, using data from the Tick Size Pilot B.I Market Quality dataset, for all pilot and control stocks and for the entire pilot period from April 2016 to March 2019. See supra note 619 for dataset description.

In order to examine changes in Rule 605 coverage, the Commission compared the number of executed shares in one market center's Rule 605 reports between October 2003 and February 2021 to data on that market center's execution volume retrieved from TAQ.[623] Figure 3 shows that an estimated 50% of shares executed during regular market hours were included in Rule 605 reports as of February 2021,[624] and shows that this number has been on a slightly downward trend since around mid-2012.[625]

[619] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014) (Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a Tick Size Pilot Plan) (''Tick Size Pilot Plan''). The Tick Size Pilot B.I Market Quality dataset contains information for approximately 2,400 small cap stocks for a period from April 2016 to March 2019. As the Tick Size Pilot data only collected data for small cap stocks, results using this dataset are not necessarily representative of all stocks.

[620] *See* Appendix B and C Requirements and Technical Specifications, *available at https://www.finra.org/sites/default/files/Appendix_B_C_Reporting_Requirements_version2.pdf.* Order types that are included in the Tick Size Pilot dataset that are not covered by Rule 605 include Resting Intermarket Sweep orders, Retail Liquidity Providing orders, Midpoint Passive Liquidity orders, Not Held orders, Clean Cross orders, Auction orders, and orders that became effective when an invalid NBBO was in effect. Order sizes included in the Tick Size Pilot dataset that are not covered by Rule 605 include orders for between 1–99 shares and orders for 10,000+ shares. *See also* Tick Size Pilot Program, Appendix B and C Statistics Frequently Asked Questions, *available at https://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf* (''Tick Size Pilot FAQs''), answer to Question 2.1. Furthermore, the Tick Size Pilot dataset includes separate statistics for orders submitted outside of regular trading hours (trading sessions E and BE). *See* Tick Size Pilot FAQs, answer to Question 4.11.

[621] Of the shares excluded on the basis of order type, the largest percentage (73.6%) are excluded because they are not-held orders.

[622] An additional percentage of this order flow is also excluded from coverage due to the exclusion of stop-loss orders and non-exempt short sales, but these are not one of the listed order types in the Tick Size Pilot dataset and therefore it is not possible to exclude them. *See* Appendix B and C Requirements and Technical Specifications, *available at https://www.finra.org/sites/default/files/Appendix_B_C_Reporting_Requirements_version2.pdf.*

[623] The number of shares traded on NYSE was collected from the intraday TAQ Consolidated Trade files for the period from October 2003 to February 2021 for the entire universe of TAQ securities. Trades outside of regular trading hours were excluded. This dataset includes trades at the opening and closing auction. Due to that fact that odd-lot trades are only included in TAQ from December 2013 onwards, the Commission excluded odd-lot trades from the dataset to avoid a mechanical decrease in coverage following their inclusion into the dataset. Rule 605 data for the same period was provided by IHS Markit.

[624] The Commission focused on the data from one market center (NYSE) because of the availability of a long time series for NYSE Rule 605 data. The Commission selected NYSE due to its large market share and ease of identifying this market center in both Rule 605 and TAQ data. Note that these results are not necessarily representative of all market centers and the results for other market centers may be different.

[625] The implementation of the MDI Rules may result in a change in the flow of orders across

Figure 3: Rule 605 Coverage Compared to TAQ, for the NYSE, October 2003–February 2021

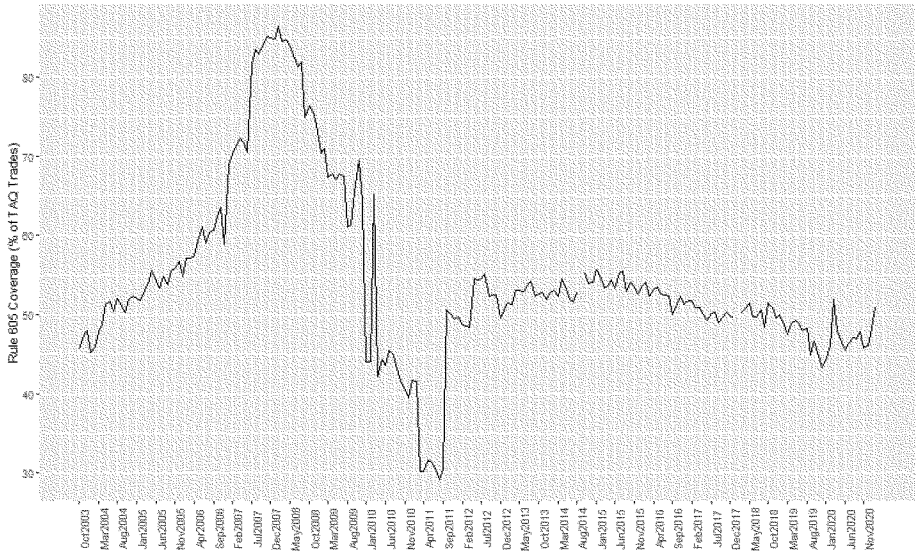

Figure 3: Rule 605 Coverage Compared to TAQ, for the NYSE, October 2003 – February 2021. This figure plots the number of shares executed on NYSE as reported in monthly Rule 605 reports, divided by the monthly total number of shares traded on NYSE as reported in TAQ. Note that the number of executed shares reported in Rule 605 reports is first divided by two, as in Rule 605 data each trade is reported twice: once for the buy-side, and once for the sell-side of the trade. Due to the presence of outliers, data for September 2014 were removed. See supra note 623 for dataset descriptions. This analysis uses data from prior to the implementation of the MDI Rules and specific numbers reported may be different following the implementation of the MDI Rules. See supra note 625 and section VII.C.1.d)(2).

Figure 3 shows that Rule 605 coverage has varied significantly over time, likely the result of market and regulatory events that may have affected the usage of orders types that are excluded from or included in the definition of a covered order. For example, equity markets have seen an increase in the usage of ISOs after Regulation NMS [626] and an increase in participation in national securities exchanges' closing auctions,[627] both of which likely have decreased Rule 605 coverage over time.[628]

The following sections will discuss the various facets of Rule 605 reporting requirements that lead to the exclusion of orders from reporting requirements and the extent to which these orders may be relevant for an assessment of execution quality, including excluded order sizes, ISOs, stop orders, non-exempt short sale orders, away-from-the-quote limit orders, and orders submitted outside of regular trading hours.

(1) Orders Less Than 100 Shares and Larger-Sized Orders

Currently, orders of certain sizes are excluded from Rule 605 reporting requirements, including orders for less than 100 shares and larger-sized orders.[629] Taken together, data on the usage of orders of these sizes implies that a large percentage of orders and trades is currently excluded from Rule 605 reporting requirements on the basis on order size, thus limiting the extent to which reporting entities compete for customers on the basis of execution quality.

(a) Orders Less Than 100 Shares

Due to the Rule's current exclusion of orders that are sized smaller than 100 shares, which excludes all odd-lot orders and, in some cases, round lot orders where a round lot is less than 100 shares, the Commission believes that Rule 605 reports are missing information about an important segment of order flow.

The rise in the use of odd-lot orders is a phenomenon that has been well-

trading venues, which may result in numbers that are different from those reported here. *See supra* section VII.C.1.(d)(2) for further discussion. However, the Commission does not believe that the MDI Rules would significantly affect the proportion of exchange volume that is covered by Rule 605 reporting requirements.

[626] *See infra* note 1021 and corresponding text. Marketable ISOs submitted at prices worse than the NBBO are excluded from Rule 605 reporting requirements.

[627] *See, e.g.,* Vincent Bogousslavsky & Dmitriy Muravyev, *Who trades at the Close? Implications for Price Discovery and Liquidity* (working paper Dec. 16, 2021), *available at https://ssrn.com/abstract=3485840* (retrieved from SSRN Elsevier database), showing that closing auctions accounted for 7.5% of daily volume in 2018, up from 3.1% in 2010. The definition of ''covered orders'' that are subject to Rule 605 reporting requirements excludes orders for which customers requested special handling, including orders to be executed at a market opening price or a market closing price. *See* 17 CFR 242.600(b)(22).

[628] Other market and regulatory changes that may have impacted Rule 605 coverage over time include the increased use of automated orders (*e.g.,* NYSE switching from a floor-based trading model to a hybrid model), which may have increased coverage during the period of 2003–2007 due to an increase in the number of ''held'' orders (*see* 2018 Rule 606 Amendments Release, 83 FR 58338), and changes in the use of block orders. Note that the use of odd-lots and orders for less than one share have also changed substantially over time, but these orders types are excluded from our analysis of TAQ data.

[629] *See* 17 CFR 242.605(a)(1). *See also supra* note 40 and corresponding text for a definition of the current order size categories included in Rule 605 reporting requirements.

documented in modern markets.[630] An analysis of data from the SEC's MIDAS analytics tool[631] confirms that the use of odd-lots has increased substantially as a percentage of total on-exchange trades within the past decade. Figure 4 plots monthly averages of the odd-lot rate (the number of odd-lot trades as a percentage of the total on-exchange trades) across stock price deciles, showing that the relative number of odd-lot trades has increased dramatically between 2012 and 2022, for high-priced stocks in particular.[632] Specifically, the figure shows that the odd-lot rate increased from around 0.6% to 2.32% for the lowest-price stocks (Decile 1), and from 10.6% to 40.9% for the highest-priced stocks (Decile 10).

Figure 4: Odd-Lot Rates by Stock Price Deciles, January 2012–March 2022

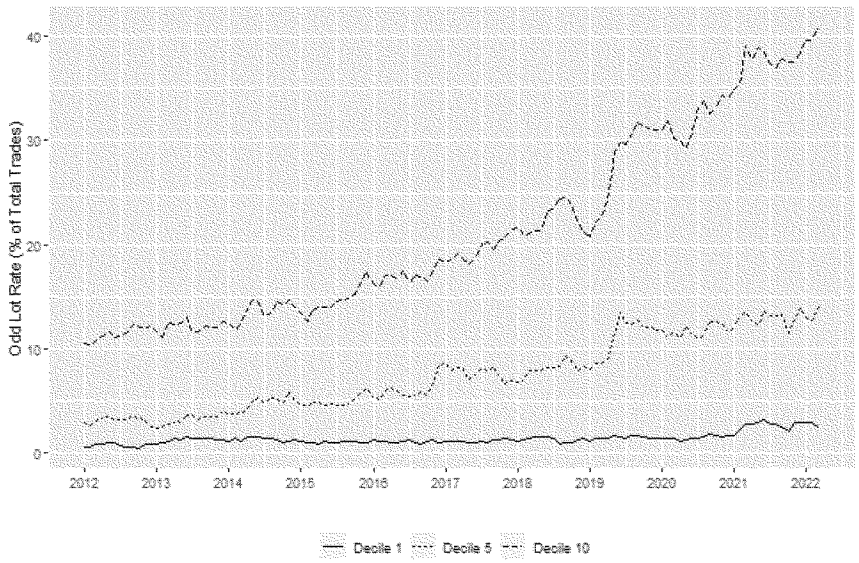

Figure 4: Odd-Lot Rates by Stock Price Deciles, January 2012 – March 2022. This figure plots the odd-lot rate (the number of odd-lot trades on national securities exchanges as a percentage of the total number of on-exchange trades) across stock price deciles for the period from January 2012 to March 2022. For brevity the plot contains data for the smallest (Decile 1), median (Decile 5) and largest (Decile 10) stock price deciles. See supra note 631 for dataset description. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. See supra note 632 and section VII.C.1.d)(2).

There is evidence that these high percentages are not only the case for odd-lot trades, but for odd-lot orders as well. Using data from January to March 2021, a recent academic working paper found that the rate of orders sized between 1 and 100 shares ranges from 5.6% of all submitted orders for less than 500 shares in the lowest-priced stocks, to 46.9% of all such orders in the highest-priced stocks.[633] This is supported by an analysis of the distribution of order sizes using order submission data from MIDAS for a sample of 80 stocks during the month of March 2022.[634] Confirming results from Figure 4 examining the time series of odd-lot order rates, Figure 5 shows that odd-lot orders make up a significant percentage of orders (18.2%), although these orders are only a small percentage of total submitted share volume (2.8%).[635]

Figure 5: Distribution of NMLOs Across Order Size Buckets, March 2022

[630] *See, e.g., supra* note 273 and accompanying text, describing how market participants have stated that odd-lots make up a majority of all trades. Until the round lot definition adopted pursuant to the MDI Rules is implemented, round lots continue to be defined in exchange rules. For most NMS stocks, a round lot is defined as 100 shares. Following the implementation of the MDI Rules, for stocks with prices greater than $250, a round lot will be defined as consisting of between 1 and 40 shares, depending on the tier. *See supra* note 577 for a definition of these tiers.

[631] *See* dataset Summary Metrics by Decile and Quartile, SEC, *available at https://www.sec.gov/marketstructure/downloads.html.* The data is available between January 2012 and March 2022.

[632] The number of odd-lot trades may be higher following the implementation of the MDI Rules due to the availability of odd-lot quotes in consolidated market data, which may result in numbers that are different from those reported here. For stocks priced above $250, the change in the definition of round lots may in result in fewer odd-lot trades, as more trades will be incorporated into the definition of round lots. *See supra* section VII.C.1.(d)(2) for further discussion.

[633] *See* Bartlett, et al. The authors divide their sample of stocks into five price-based buckets, with stocks in the lowest-priced group defined as those priced at $20.00 or less, and stocks in the highest-priced group priced at $250.00 or more.

[634] This dataset consists of NMLO submission data collected from MIDAS and includes the posted orders and quotes on 11 national securities exchanges, for a sample of 80 stocks, across all trading days in March 2022. For more details on this dataset, *see https://www.sec.gov/marketstructure/midas-system.* The sample of stocks is chosen to be a representative sample in terms of market capitalization and price (calculated using price and shares outstanding data from CRSP on the last trading day in February 2021, from CRSP 1925 US Stock Database, Ctr. Rsch. Sec. Prices, U. Chi. Booth Sch. Bus. (2022)). Note that the MIDAS dataset only includes displayed orders, and includes some order types that are currently excluded from Rule 605 reports, such as short sale orders and orders with special handling requests, as it is not possible to distinguish these orders in MIDAS.

[635] This data only includes information about NMLOs, and therefore information about the sizes of market orders and marketable limit orders is not available.

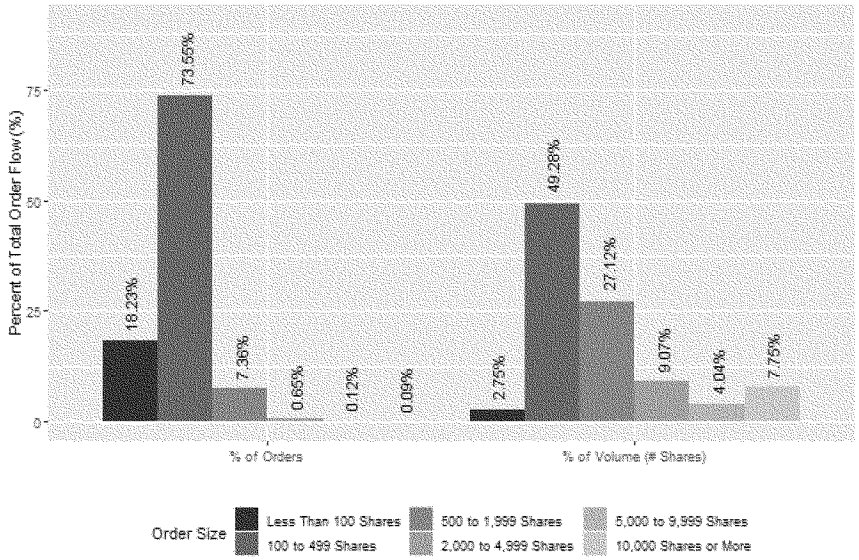

Figure 5: Distribution of NMLOs across Order Size Buckets, March 2022. This figure plots the percentage of NMLOs that can be categorized into the existing Rule 605 order size categories, using order submission data from MIDAS. Percentages are expressed relative to the total number of orders and the total number of shares. See supra note 634 for dataset description.

Market commentators have attributed this rise in odd-lot trading to a variety of factors. For example, an increase in the number of high-priced stocks caused order sizes to decrease in these stocks, where trading in larger order sizes is more expensive.[636] Another factor is a rise in algorithmic trading, which chops orders into many smaller orders. Broker-dealers that handle institutional orders often make use of odd-lot orders as a result of trading algorithms that split larger parent orders into smaller child orders to reduce the market impact of their trades.[637] High frequency traders also use inside the spread odd-lot orders as a means of probing for hidden liquidity or detecting forthcoming order flow. Academic papers have found evidence that high frequency traders and other institutional investors make up a substantial fraction of odd-lot trades.[638] Another potential reason for the increase in odd-lot trading is the increasing presence of trading by individual investors, who tend to use smaller order sizes.[639] Therefore, by not capturing information related to these orders, Rule 605 reports are missing information about potentially important segments of order flow from both individual and institutional investors.

(b) Orders Less Than a Share

Due to the Rule's current exclusion of fractional orders that are smaller than one share,[640] the Commission believes that Rule 605 reports are missing information about an increasingly important segment of individual investor order flow. Similar to the increase in odd-lots, one reason for the increase in the use of fractional shares is the increasing presence of trading by individual investors, who tend to use smaller order sizes.[641] The past few years have seen increasing attention paid to fractional shares, as more and more retail brokers are offering this functionality.[642] The Commission understands that there are at least two different ways that retail brokers handle fractional trades: first, they can rely on their clearing firm, which will often ''round up'' the fractional part of the order and deposit the residual in an internal ''fractional inventory account''; and second, they can execute fractional trades against their own inventory.[643]

An estimation of the percentage of orders that are currently excluded from Rule 605 reporting requirements because they are smaller than one share is difficult, as these orders are executed off-exchange and therefore not included in public datasets. However, an analysis using data from CAT[644] confirms that

[636] *See, e.g.,* Phil Mackintosh, ''*Odd Facts About Odd-Lots,*'' (Apr. 2021), *available at https://www.nasdaq.com/articles/odd-facts-about-odd-lots-2021-04-22.*

[637] *See infra* section VII.C.3.(a)(1)(b), discussing the practice of broker-dealers handling institutional parent orders as not held orders and splitting them up into child orders.

[638] *See, e.g.,* Hardy Johnson, Bonnie F. Van Ness & Robert A. Van Ness, *Are all odd-lots the same? Odd-lot transactions by order submission and trader type,* 79 J. Banking & Fin. 1(2017); Maureen O'Hara, Chen Yao & Mao Ye, *What's not there: Odd lots and market data,* 69 J. Fin. 2199 (2014).

[639] *See, e.g.,* Bartlett et al. (2022); Matthew Healey, *An In-Depth View Into Odd Lots,* Chi. Bd. Options Exch. (Oct. 2021), *available at https://www.cboe.com/insights/posts/an-in-depth-view-into-odd-lots/.*

[640] Note that orders greater than one share can also be fractional. If the fractional order is for more than just a single share (*e.g.,* 2.5 shares), the broker-dealer may internalize the fractional component (0.5 shares) and reroute the whole component (2 shares) to a market center for execution.

[641] *See, e.g.,* Kevin L. Matthews, *What are Fractional Shares and How do They Work?,* Bus. Insider (Sept. 21, 2022), *available at https://www.businessinsider.com/personal-finance/fractional-shares.*

[642] *See, e.g.,* Rick Steves, *Fractional Shares: Experts Weight in Amid Exploding Retail Trading Volumes,* Fin. Feeds (June 7, 2021, 8:25 a.m.), *available at https://financefeeds.com/fractional-shares-experts-weigh-in-amid-exploding-retail-trading-volumes/,* which shows that trading volume increased substantially (in one case, more than 1,400%) for brokers after they introduced the use of fractional shares.

[643] *See, e.g.,* Robert P. Bartlett, Justin McCrary & Maureen O'Hara, *A Fractional Solution to a Stock Market Mystery* (working paper July 20, 2022), *available at https://ssrn.com/abstract=4167890* (retrieved from SSRN Elsevier database). Note that, as fractional shares fall below the smallest order size category in current Rule 605, a broker-dealer that currently exclusively executes fractional shares would be a market center, but would not be required to file Rule 605 reports.

[644] This dataset contains CAT records capturing introducing and trading activity in March 2022, including fractional NMS orders that were eventually executed on- and off-exchange. As individual fractional orders are often aggregated into a single representative order before routing and execution, staff looked at the information specific to the originating customer orders (designated as MENO orders events in CAT) that were eventually

Continued

levels of fractional trading are mostly the result of individual investor trading: in March 2022, there were 31.67 million orders for less than one share that eventually received an execution, the overwhelming majority (92%) of which were submitted by accounts attributed to ''Individual Customers.'' [645] While these orders only represented a small fraction (around 1.4%) of total executed orders, they represented a much higher fraction (10.4%) of executions received by individual investors.[646] Therefore, by not capturing information related to these orders, Rule 605 reports are missing information about an important segment of individual investor trades.

(c) Larger-Sized Orders

Due to the Rule's current exclusion of orders that are larger than 10,000 shares,[647] the Commission believes that Rule 605 reports are missing information about another important segment of order flow. The Commission understands that practices have evolved such that most broker-dealers that service institutional investors use SORs to break up these customers' large parent orders into smaller-sized child orders.[648] As shown in Figure 6, which plots the number of shares associated with trades that are for 10,000 or more shares as a percent of total executed shares,[649] the rate of larger-sized trades declined from more than 25% in late 2003 to 11.3% as of March 2022. This decline is likely the result of the increased use of SORs, though other market changes such as the overall increase in stock prices may play a part. However, the rate of larger-sized trades has been increasing since August 2011, when the rate of larger-sized trades was around 6.7%.

Figure 6: Larger-Sized Trades as a Percent of Total Executed Shares, September 2003–March 2022

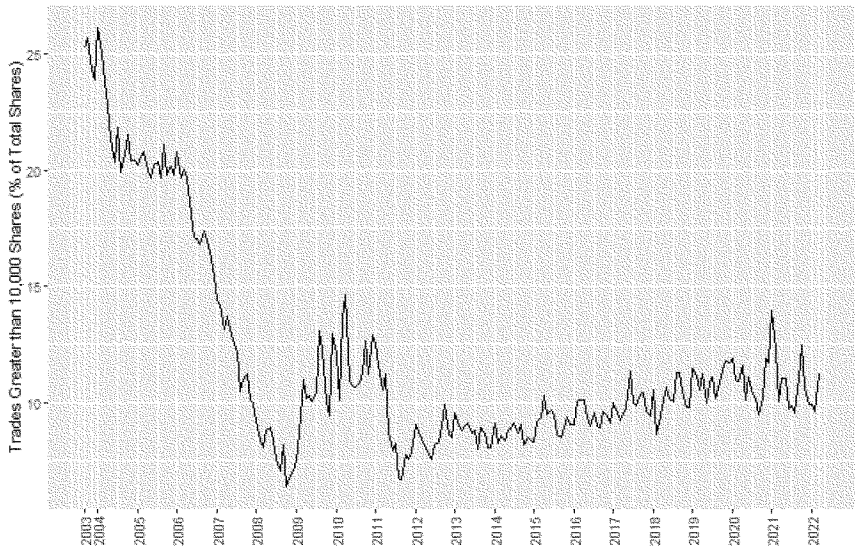

Figure 6: Larger-Sized Trades as a Percent of Total Executed Shares, September 2003 – March 2022. This figure plots the monthly number of shares associated with trades that are for 10,000 shares or more, divided by the total number of executed shares, using data from TAQ. See supra note 649 for dataset description.

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Furthermore, larger-sized orders make up a non-negligible percent of order flow. Figure 5, which plots the distribution of NMLO sizes in order submission data from MIDAS for the month of March 2022, shows that, while NMLOs of 10,000 or more shares made up only 0.09% of order flow in terms of number of orders, they made up nearly 7.8% of order flow in terms of share volume. However, some, or possibly most, of these larger-sized orders may be not held to the market, so would not be required to be included in Rule 605 reports even without the exemptive relief.[650]

(2) Orders Submitted With Stop Prices

The Commission believes that the current exclusion of orders with stop prices from the definition of ''covered order'' excludes orders that are likely relevant for investors. A stop order, also referred to as a stop-loss order, is an order to buy or sell a stock once the price of the stock reaches the specified price, known as the stop price. When the stop price is reached, a stop order becomes a market order, or a limit order in the case of so-called stop limit

executed, and, separately, examined the information specific to the executions of the orders (designated as MEOT for off-exchange or EX and EOT for on-exchange events in CAT) that could be linked to the fractional MENOs either directly or via a representative order.

[645] *See supra* note 609 for a definition of account types in CAT.

[646] In terms of notional volume, executed fractional orders make up around 0.17% of total executed dollar volume and 1.4% of individual investor executed dollar volume.

[647] *See supra* note 281 and corresponding discussion describing the exemptive relief provided by the Commission in 2001 for orders with a size of 10,000 shares or greater.

[648] *See infra* section VII.C.3.(a)(1)(b) further discussing the practice of broker-dealers handling institutional parent orders as not held orders and splitting them up into child orders.

[649] This analysis uses data from intraday TAQ Consolidated Trade files for the period from September 2003 to March 2022 for the entire universe of TAQ securities. Plotted is the monthly number of shares associated with trades that are for 10,000 shares or more, divided by the total number of executed shares. The data is limited to trades with sales conditions indicating regular trades, including regular trades with no associated conditions, automatic executions, intermarket sweep orders, and odd lot trades. *See* NYSE Daily TAQ Client Specification, *available at https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Client_Spec_v3.3.pdf.*

[650] *See supra* note 60 and accompanying text discussing broker-dealers' requirements under Rule 606(b)(3) to provide individualized reports of execution quality upon request for not held orders.

orders.[651] The treatment of stop orders varies across broker-dealers and market centers.[652]

The Commission understands that stop orders resting on national securities exchanges have been uncommon, and the vast majority of stop orders are handled by broker-dealers.[653] Some national securities exchanges have eliminated this order type from their rule book.[654] Furthermore, the use of stop orders has typically been associated with individual investors,[655] who use these orders to try to protect a gain or to limit potential losses of a currently held position.[656] Table 4 breaks down a sample of stop loss order volume by account type and stop loss order type using CAT data for March 2022.[657] The data confirms that the use of stop orders by institutional investors is very rare (only 0.23% of market and 0.0003% of limit orders are submitted with stop prices), while their use is relatively more common for individual investors, particularly for market orders, around 6.44% of which are submitted with stop prices.

TABLE 4—STOP ORDER VOLUME BY ACCOUNT AND ORDER TYPES, MARCH 2022

Investor and order type	Orders with stop prices (% of total orders)	Types of stop orders (% of total stop orders)			
		Stop/ stop limit	Stop on quote/stop limit on quote	Trailing stop/ trailing stop limit	Total
Institutional:					
Market	0.23	49.4	0.5	11.3	61.3
Limit	0.0003	37.8	0.4	0.5	38.7
Individual:					
Market	6.44	68.3	9.0	10.3	87.6
Limit	0.03	10.1	1.7	0.6	12.4

Table 4: Stop Order Volume by Account and Order Types, March 2022. This table shows the percentage of orders that are submitted with stop prices (as a percentage of total orders) separately for accounts associated with institutional and individual investor types and for market and limit orders, using a sample of CAT data for all NMS stocks from March 2022. Also shown is a breakdown of stop order submission volume according to six common types of stop orders. *See supra* note 657 for information on the dataset and identification of stop orders.

(3) Non-Exempt Short Sale Orders

Commission staff has taken the position that staff would view all non-exempt short sale orders as special handling orders.[658] As a result, these orders are currently not included as part of Rule 605 statistics, which may exclude a large portion of orders that are likely relevant for market participants.

Non-exempt short sale orders are orders that are subject to price restrictions under Rule 201 of Regulation SHO,[659] which contains a short sale circuit breaker that, when triggered by a price decline of 10% or more from a covered security's prior closing price, imposes a restriction on the price at which the covered security may be sold short (*i.e.,* must be above the current national best bid). Once triggered, the price restriction will apply to short sale orders in that security for the remainder of the day and the following day, unless the short sale order is ''short exempt.'' [660] Since a non-exempt short sale that is subject to a price restriction is only allowed to take place at least one tick above the NBB, these could be ''orders to be executed on a particular type of tick or bid,'' which would exclude them from the definition of ''covered orders.'' [661] The exclusion of tick-sensitive orders from Rule 605 reporting requirements ensures that these orders do not skew execution quality statistics, as the prevention of

[651] *See, e.g.,* SEC, *Types of Orders, available at https://www.investor.gov/introduction-investing/investing-basics/how-stock-markets-work/types-orders* and the definitions of stop order and stop limit order in FINRA Rule 5350(a), *available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/5350.* The stop price can be the last sale price, or a quotation in the case of stop on quote or stop limit on quote orders. The stop price may also be permitted to increase or decrease by a predetermined amount or formula in the case of trailing stop and trailing stop limit orders.

[652] For example, one broker-dealer stated that some of the market centers to which it routes orders may impose price limits to prevent stop orders from being triggered by potentially erroneous trades, and that these price limits vary by market center. *See Trading FAQs: Order Types,* Fidelity, *available at https://www.fidelity.com/trading/faqs-order-types.* Another brokerage firm states that, depending on to which market center a stop limit order is presented, a stop limit order can be activated as a limit order using either a transaction or quotation as the triggering event. *See Best Execution of Equity Securities,* UBS (June 2021), *available at https://www.ubs.com/content/dam/static/wmamericas/bestexecution.pdf.*

[653] *See, e.g.,* Memorandum from SEC Division of Trading and Markets on Certain Issues Affecting Customers in the Current Equity Market Structure (Jan. 26, 2016), *available at https://www.sec.gov/spotlight/equity-market-structure/issues-affecting-customers-emsac-012616.pdf,* citing NYSE Order Type Usage Chart illustrating that stop orders, along with good-til-canceled, agency cross and manual orders, accounted for only 0.19% of total matched volume for Q3 2015 and Q4 2015. *See also How to Survive the Markets Without Stop-Loss Orders,* NASDAQ (Dec. 2, 2015), *available at https://www.nasdaq.com/articles/how-survive-markets-without-stop-loss-orders-2015-12-02,* stating that stop orders represent around 2% of all orders placed on national securities exchanges.

[654] *See, e.g.,* Securities Exchange Act Release No. 76649 (Dec. 15, 2015), 80 FR 79365 (Dec. 21, 2015) (SR–NYSE–2015–60) (''NYSE Notice''); Securities Exchange Act Release No. 76655 (Dec. 15, 2015), 80 FR 79382 (Dec. 21, 2015) (SR–NYSEMKT–2015–103).

[655] *See, e.g.,* Annie Massa & Sam Mamudi, *Black Rock Calls for Halting Stock Market to Avoid Volatility,* Bloomberg Bus. (Oct. 7, 2015), *available at http://www.bloomberg.com/news/articles/2015-10-07/blackrock-calls-for-halting-the-stock-market-to-avoid-volatility* (citing industry concerns with ''the widespread use of stop orders by retail investors'').

[656] *See, e.g.,* Memorandum from SEC Division of Trading and Markets on Certain Issues Affecting Customers in the Current Equity Market Structure (Jan. 26, 2016), *available at https://www.sec.gov/spotlight/equity-market-structure/issues-affecting-customers-emsac-012616.pdf.* Meanwhile, professional or institutional investors are more likely to have the resources to be able to actively monitor their orders, and are therefore less likely to use stop orders. *See, e.g., How to Survive the Markets Without Stop-Loss Orders,* NASDAQ (Dec. 2, 2015), *available at https://www.nasdaq.com/articles/how-survive-markets-without-stop-loss-orders-2015-12-02.*

[657] *See supra* note 609 for dataset description. Stop orders are identified using the reporting requirements for stop orders in the CAT Reporting Technical Specifications for Industry Members. *See CAT Reporting Technical Specifications for Industry Members,* Consolidated Audit Trail, 64 (July 29, 2022), *available at https://www.catnmsplan.com/sites/default/files/2022-07/07.29.2022_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r16_CLEAN_0.pdf.*

[658] *See* 2013 FAQs.

[659] *See supra* note 246 for more information about Rule 201 of Regulation SHO.

[660] ''Short exempt'' orders include short sale orders from market makers and short sales priced above the current national best bid at the time of submission. *See* 17 CFR 242.201(c) and (d).

[661] *See supra* section II.B.1.(b) for a discussion of the definition of covered orders.

these orders from executing at the best bid would likely lead to lower execution quality statistics (*e.g.,* negative price improvement and higher effective spreads) as compared to other orders.

However, in the years since Rule 201's adoption, it has become clear that Rule 201 price test restrictions are not often triggered. Staff found that, between April 2015 and March 2022, a Rule 201 trigger event only occurred on 1.7% of trading days for an average stock.[662] Around 18% of Rule 201 triggers occur the day after a previous trigger event, and around 46% occur within a week after a previous trigger event. These statistics imply that Rule 201 triggers tend to be relatively rare, and clustered around a few isolated events.

(4) Orders Submitted Pre-Opening/Post-Closing

When Rule 605 was first adopted, the Commission explained the decision to exclude orders submitted outside of regular trading hours by stating that there are substantial differences in the nature of the market between regular trading hours and after-hours, and therefore orders executed at these times should not be blended together.[663] However, the current exclusion of all orders submitted outside of regular market hours from the definition of ''covered order,'' [664] in addition to excluding orders that execute outside of regular hours, also extends to orders that, while submitted outside of regular market hours, are only eligible to execute during regular market hours. While these orders represent only a small portion of order flow, they represent a relatively high concentration of orders from individual investors. Therefore, the current exclusion of all orders submitted outside of regular trading hours from Rule 605 may lead to the exclusion of an important segment of individual investor orders.

When Rule 605 was first adopted, after-hours markets were still mostly the purview of institutional investors, but a growing number of broker-dealers had recently begun providing their retail customers with the ability to have their orders directed to electronic communication networks (ECNs) after the major markets close for the day. The growth in the availability of after-hours trading for individual investors raised concerns over, and heightened awareness of, the differences in execution quality for after-hours trades, which tend to be much riskier due to lower liquidity levels and higher volatility in after-hours markets.[665]

Along with an increase in access to after-hours trading, the late 1990s and early 2000s saw an increase in the prevalence of online brokerages, in which individual investors in particular were given newfound access to order entry systems. Early research into the rise of online brokerages describes a shift from a system in which retail brokers ''communicate buy/sell recommendations to clients over the telephone'' (presumably during regular working hours), to a system in which individual investors have ''round-the-clock access to trading systems and account information.'' [666] Logically, as investors make use of the ''round-the-clock'' access offered by online brokerages, the number of orders submitted outside of regular market hours has likely increased over the preceding decades. However, not all orders submitted after hours are eligible to trade in after-hours markets, which continues to be the case even in today's market. For example, some broker-dealers' platforms allow customers to submit orders at any time, but unless the customer requests to trade during extended hours and the security is eligible to trade as such, the order will only be executed during regular market hours.[667] Since these orders are not intended to, and in many cases are not eligible to, execute outside of regular trading hours, these orders may not be subject to the same concerns that drove the Commission to exclude orders submitted outside of trading hours from Rule 605 reporting requirements in the Adopting Release.

To estimate the amount of orders that are submitted outside of regular trading hours, data from the Tick Size Pilot B.I Market Quality dataset [668] was analyzed to break order volume down into different trading sessions according to when the order was eligible to trade.[669] The Commission considers only those orders that have an effective time during regular market hours to be eligible for Rule 605 reporting, and excludes orders that are otherwise excluded from current Rule 605 reporting requirements, *i.e.,* because they are an excluded order type or size. The Commission found that a small fraction of orders are effective outside of regular market hours (1.3%), while the vast majority of orders (98.7%) are effective during regular market hours.

At least some of these orders, while submitted outside of regular market hours, execute during regular trading hours, *e.g.,* because they are NMLOs that are only eligible to execute during regular trading hours.[670] In order to estimate the extent to which this occurs, a sample of CAT data [671] was analyzed to examine submission volumes of NMLOs submitted outside of regular trading hours that were designated as only eligible to trade during regular trading hours,[672] and compared them to

[662] This analysis looked at the percentage of trading days that experienced a Rule 201 trigger event for the period January 2012 to February 2021 for all listed stocks on NYSE or NASDAQ exchanges and then averaged across stocks. The Commission restricted its sample to common stocks identified in CRSP (share code 10 or 11), from CRSP 1925 US Stock Database, Ctr. Rsch. Sec. Prices, U. Chi. Booth Sch. Bus. (2022). The Commission also excluded financial stocks (SIC code 6000–6999), as financial stocks may have different properties than other types of stocks, including characteristics related to short selling (*e.g.,* Markus K. Brunnermeier & Martin Oehmke, *Predatory Short Selling,* 18 Rev. Fin. 2153 (2014)). Rule 201 circuit breaker data retrieved from *ftp://ftp.nyxdata.com/NYSEGroupSSRCircuitBreakers/* and *ftp://ftp.nasdaqtrader.com/SymbolDirectory/shorthalts/.*

[663] *See* Adopting Release, 65 FR at 75421.

[664] *See* 17 CFR 242.600(b)(77).

[665] *See, e.g., Special Study: Electronic Communication Networks and After-Hours Trading,* SEC (June 2000), *available at https://www.sec.gov/news/studies/ecnafter.htm.*

[666] Jennifer Wu, Michael Siegel & Joshua Manion, *Online Trading: An Internet Revolution,* Sloan School of Management Massachusetts Institute of Technology Research Notes, p. 4 (1999).

[667] *See, e.g., Extended Hours Overview,* Charles Schwab, *available at https://www.schwab.com/public/schwab/nn/qq/about_extended_hours_trading.html; Extended-Hours Trading,* Robinhood, *available at https://robinhood.com/us/en/support/articles/extendedhours-trading/.*

[668] *See supra* note 619 for dataset description.

[669] These trading sessions include (1) regular hours only; (2) extended hours only; (3) both regular and extended hours with an effective time during regular market hours; and (4) both regular and extended hours with an order effective time during extended hours. *See* Tick Size Pilot Program Appendix B and C Frequently Asked Questions, Q4.11, *available at https://www.finra.org/sites/default/files/Tick-Size-Pilot-Appendix-B-and-C-FAQ.pdf.*

[670] Note that most retail brokers do not permit market orders during extended hours trading. *See, e.g., Extended Hours Overview,* Charles Schwab, *available at https://www.schwab.com/public/schwab/nn/qq/about_extended_hours_trading.html; Extended-Hours Trading,* Robinhood, *available at https://robinhood.com/us/en/support/articles/extendedhours-trading/.*

[671] The sample consists of 390 stocks for the period of March 2021. Note that this sample of NMLOs collected from CAT may include NMLOs that would not be included in Rule 605 reports, if they never touch the NBBO at any point during their lifespan. Characteristics include whether the order was submitted to an exchange or off-exchange market center, distance from the prevailing quote midpoint (or, in the case of pre-open orders, from the open price) in basis points (bps), and order size in terms of number of shares. For off-exchange orders, the Commission is also able to characterize whether the order was initially submitted by an individual investor.

[672] The definition of marketability for the purposes of this analysis for pre-open orders is determined using the NBBO that is first disseminated after the time of order receipt, such that orders to be executed at a market opening price are excluded. *See supra* note 231 and accompanying text for more information about

the volumes and characteristics of NMLOs submitted during a sample 10-minute time window from 9:40 a.m. to 10:40 a.m. This analysis confirms that pre-open orders eligible to trade during regular trading hours likely make up only a very small percentage of order volume, representing only around 4.8% of the volume of orders submitted during a single ten-minute period of the trading day. However, further analysis reveals that these orders contain a high concentration of individual investor orders. Specifically, pre-open share volume contains a much larger fraction of individual investor shares (29.5%) than the sample time window during regular trading hours (1.9%), at least for off-exchange market centers for which individual investor orders could be identified.[673] This is consistent with the idea that at least some of this order flow represents orders that are submitted by individual investors outside of market hours, *i.e.,* via online brokerage accounts, but not necessarily with the intention to engage in after-hours trading.

(c) Information Required by Current Rule 605 Reporting Requirements

In addition to decreasing the coverage of Rule 605, subsequent market changes since the initial adoption of Rule 605 may have also decreased the relevance of some of the metrics included in Rule 605 reports. This section will discuss how market changes may have affected, or will likely affect in the near future, aspects of several such metrics, including the definition of round lots for order size categories, the granularity of metrics related to time-to-execution, and the use of a five-minute time horizon for realized spreads.

(1) Order Size Categories

The Commission believes that defining order size categories in terms of numbers of shares has led these order size categories to be less informative about differences in execution qualities across differently-sized orders. To illustrate, consider that some Regulation NMS rules exclude orders or trades that are sized above $200,000, as these orders typically warrant different treatment than smaller orders.[674] For a $50 stock, a $200,000 order would be equivalent to around 4,000 shares, meaning that typically-sized orders (*i.e.,* orders that are not excluded from the previously described Regulation NMS rules) below $200,000 (and above $500, given that orders below 100 shares are excluded) are split between three order size categories: 100 to 499 shares, from 500 to 1999 shares, and from 2000 to 4999 shares. Market participants are therefore able to use these order size categories to compare across orders of different sizes. However, for a $500 stock, a $200,000 order would only be equivalent to 400 shares. Therefore, for the purposes of Rule 605 reporting, nearly all typically-sized orders in this high-priced stock are either grouped in the smallest order size category (100 to 499 shares[675]), or, if they would fall below the smallest order size category of 100 shares, excluded altogether from reporting requirements.[676] As all orders tend to be clustered into a single category, market participants are unable to use these categories to compare across orders of different sizes in higher-priced stocks. Similarly, at least one market participant argues that the definition of the current order size categories in terms of number of shares together with the exclusion of orders of less than 100 shares,[677] has led to the exclusion of more orders with low dollar values as the average stock price increases.[678]

Furthermore, the Commission's 2020 adoption of the MDI Rules included a new definition of ''round lot'' that causes some round lots to be excluded from reporting requirements, absent an update to Rule 605's order size categories.[679] Specifically, the current size categories as defined under Rule 605, which exclude orders with fewer than 100 shares, exclude a portion of round lots for stocks with prices greater than $250.

(2) Non-Marketable Limit Order Categories

The Commission preliminarily believes that the current categorization of NMLOs may include orders whose executions are more likely to depend on their limit prices and price movements in the market, and exclude orders whose executions are more likely to depend on their handling by the market center. This could lead to the excessive exclusion of limit orders whose execution quality may be relevant to both individual and institutional investors.[680]

When proposing to exclude away-from-the-quote NMLOs with a limit price more than ten cents away from the NBBO, the Commission reasoned that the execution quality statistics for these types of orders may be less meaningful because their executions depend more on the order's limit price and price movement in the market than on handling by the market center.[681] Meanwhile, the current ''near-the-quote'' limit order category[682] is meant to include limit orders that are submitted away from the NBBO, but that still have a relative likelihood of being executed (hence the minimum distance requirement from the NBBO). However, it is important to note that the likelihood of execution of both greatly depends on the movement of the NBBO. An order submitted even within 10 cents of the NBBO may never receive an opportunity to be executed if that order never touches the NBBO (*e.g.,* if prices were to move away from that order immediately after submission), and an order that is submitted further than 10 cents may indeed eventually execute if prices move towards the order.

Figure 7 breaks down a sample of MIDAS NMLO submission data from 80 stocks in March 2022[683] into NMLO

defining the marketability of orders submitted outside of regular market hours.

[673] As the account type (*i.e.,* individual or institutional) data field is only available upon order origination and is not transferred to the executing market center, staff was not able to differentiate individual investors in the CAT data for exchanges.

[674] *See, e.g.,* Rule 606(a)(1) of Regulation NMS (requiring reports on the routing of customer orders) and Rule 600(b)(25) of Regulation NMS (defining ''customer order'' to exclude an order with a market value of $200,000 or more); Rule 604(b)(4) of Regulation NMS (providing an exception for orders of block size from required limit order display) and Rule 600(b)(12) of Regulation NMS (defining ''block size'' as, in part, an order for a quantity of stock having a market value of at least $200,000).

[675] *See* 17 CFR 242.605(a)(1). *See also supra* note 40 and corresponding text for a definition of the current order size categories included in Rule 605 reporting requirements.

[676] In addition, even prior to the implementation of the MDI Rules, a small number of NMS stocks have a round lot size smaller than 100. *See supra* note 266.

[677] *See supra* section VII.C.2.(b)(1)(a) for a discussion of the exclusion of orders that are less than 100 shares from current Rule 605 reporting requirements.

[678] *See* Phil Mackintosh, *Modern Retail Needs Modern Rules,* NASDAQ (May 27, 2021, 11:54 a.m.), *available at https://www.nasdaq.com/articles/modern-retail-needs-modern-rules-2021-05-27/.*

[679] *See supra* note 577 for a definition of these tiers.

[680] Both institutional and individual investors likely make use of NMLOs. One academic study, using data on retail orders between 2003 and 2007 from two OTC market centers, estimated that NMLOs made up around 39% of individual investor order flow. *See* Eric K. Kelley & Paul C. Tetlock, *How Wise are Crowds? Insights from Retail Orders and Stock Returns,* 68 J. Fin. 1229 (2013). Other academic papers suggest that NMLO usage by institutional investors may also be high. *See, e.g.,* Amber Anand, Sugato Chakravarty & Terrence Martell, *Empirical Evidence on the Evolution of Liquidity: Choice of Market Versus Limit Orders by Informed and Uninformed Traders,* 8 J. Fin. Mkt. 288 (2005); Ron Kaniel & Hong Liu, *So what orders do informed traders use?,* 79 J. Bus. 1867 (2006).

[681] *See* Proposing Release, 65 FR 48406 (Aug. 8, 2000) at 48414.

[682] *See* 17 CFR 242.600(b)(14).

[683] *See supra* note 634 for a description of the dataset.

types, including away-from-the-quote, near-the-quote, and at-the-quote NMLOs, along with several categories of inside-the-quote NMLOs depending on their distance from the midpoint (below-the-midpoint, at-the-midpoint, and beyond-the-midpoint).[684] The figure shows that away-from-the-quote NMLOs represent nearly a quarter of all non-marketable share volume.

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Figure 7: Order Submission Share Volume by NMLO Type, March 2022

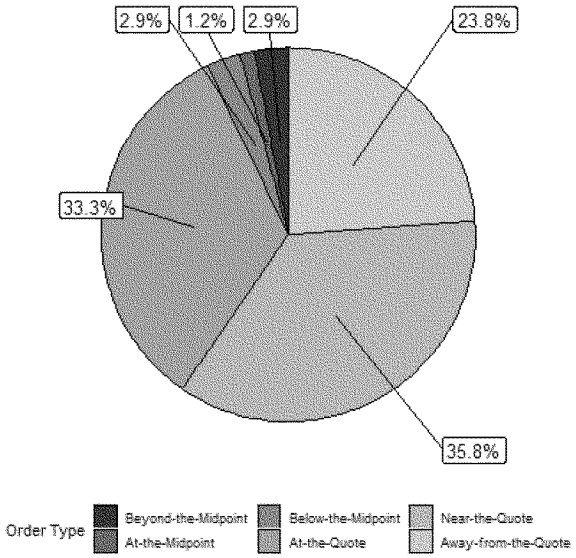

Figure 7: Order Submission Share Volume by NMLO Type, March 2022. This figure plots the percentage of order flow that can be categorized into various NMLO categories, using order submission data from MIDAS. See supra note 634 for a description of the dataset. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. See supra note 684 and section VII.C.1.d)(2).

Figure 8 presents data on the fill rates of NMLO orders, broken down by NMLO type, using the same sample of MIDAS NMLO submission data.[685] The figure shows that near-the-quote and away-from-the-quote NMLOs appear very similar in terms of fill rates (0.6% and 0.18%, respectively), particularly compared to other types of NMLOs (*e.g.,* inside-the-quote NMLOs have an average fill rate of around 2.7% to 5.1%). The fact that near-the-quote and away-from-the-quote NMLOs have similar fill rates is consistent with the possibility that the current exclusion of NMLOs priced more than 10 cents away from the NBBO is based on a threshold that does not optimally differentiate between orders that have a meaningful chance to execute.[686] Meanwhile, orders that never have a meaningful opportunity to execute (*e.g.,* because they never touch the NBBO) may be included in Rule 605 statistics. To get an idea of the extent to which such orders are currently included in Rule 605 statistics, note that, according to Figure 8, more than 99% of near-the-quote NMLOs do not execute, which, according to Figure 7, represents around 36% of total submission volume. While it is possible that some of these orders did not execute because of their handling by the market center, it is unlikely that this is case for all of them, and likely that some of the lack of fills was the result of other factors, such as price movements or cancellations by the submitter.[687]

Figure 8: Fill Rates of NMLOs, March 2022

[684] Results may be different following the implementation of the MDI Rules. Specifically, the NBBO is anticipated to narrow for stocks priced above $250 as a result of the new definition of round lots, which would likely decrease the number of inside-the-quote NMLOs and increase the number of quotes at or outside of the quotes for these stocks. *See supra* section VII.C.1.(d)(2) for further discussion.

[685] The distribution of orders into various NMLO categories may change following the implementation of the MDI Rules. *See supra* note 684 and section VII.C.1.d)(2). However, it is not clear how a change in the distribution of orders into various NMLO categories would affect the average fill rates of these NMLO categories.

[686] Commenters supported including NMLOs further away from the quote in Rule 605 reports but noted the difficulty of providing meaningful execution quality statistics for such orders. *See supra* notes 296–297 and accompanying text.

[687] *See infra* section VII.E.2.(b) for a discussion of how NMLO orders that are cancelled quickly after submission may impact fill rates.

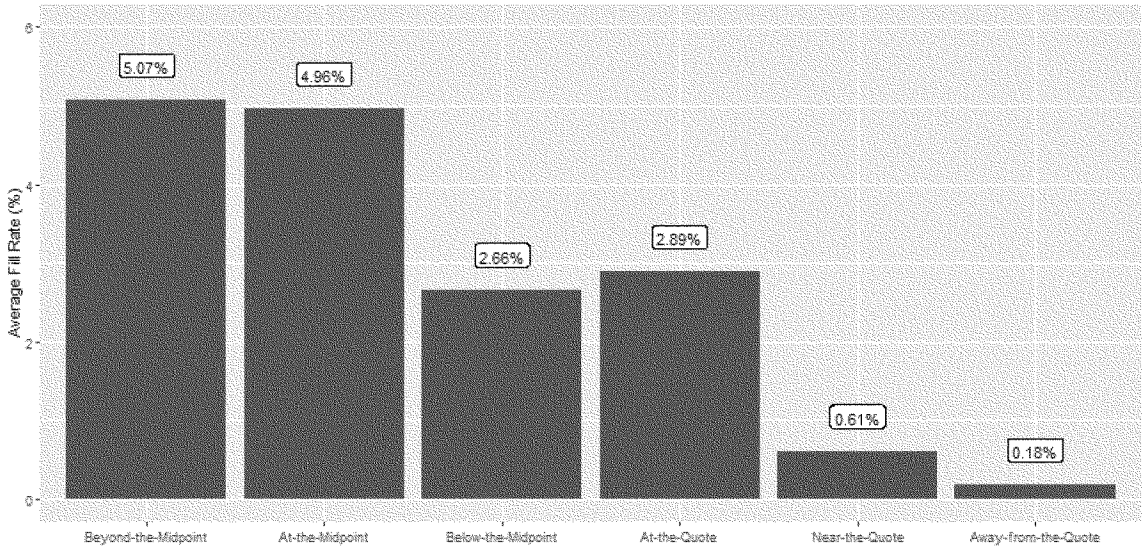

Figure 8: Fill Rates of NMLOs, March 2022. This figure plots the fill rates of order flow that can be categorized into various NMLO categories, using order submission data from MIDAS. Fill rates are calculated as the number of shares executed divided by the number of shares submitted. See supra note 634 for a description of the dataset. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. See supra note 685 and section VII.C.1.d)(2).

Furthermore, defining the threshold for inclusion in Rule 605 reporting requirements in nominal terms (*i.e.,* 10 cents) means that NMLO coverage varies depending on the stock price: high-price stocks with smaller relative tick sizes have less NMLO coverage, since 10 cents represents a relatively tighter band around the NBBO.[688] This is shown in Figure 9, which breaks down the NMLO submission volumes in Figure 8 by both order type and average share prices. The figure shows that away-from-the-quote NMLOs represent 24.4% of total NMLO share volumes for the group of stocks with the highest share prices, but only 8.4% for the group of stocks with the lowest share prices. Excluding large portions of relevant NMLOs results in less reliable market quality measures; this may especially be the case for high-priced stocks, thus making comparisons between market centers less reliable for these stocks.

Figure 9: Order Submission Share Volume by NMLO Type and Stock Price Quartiles, March 2022

[688] Results may be different following the implementation of the MDI Rules. Specifically, NMLO coverage for stocks priced above $250 may decrease even further, as the narrowing of the NBBO for these stocks would result in even tighter price bands. *See supra* section VII.C.1.(d)(2) for further discussion.

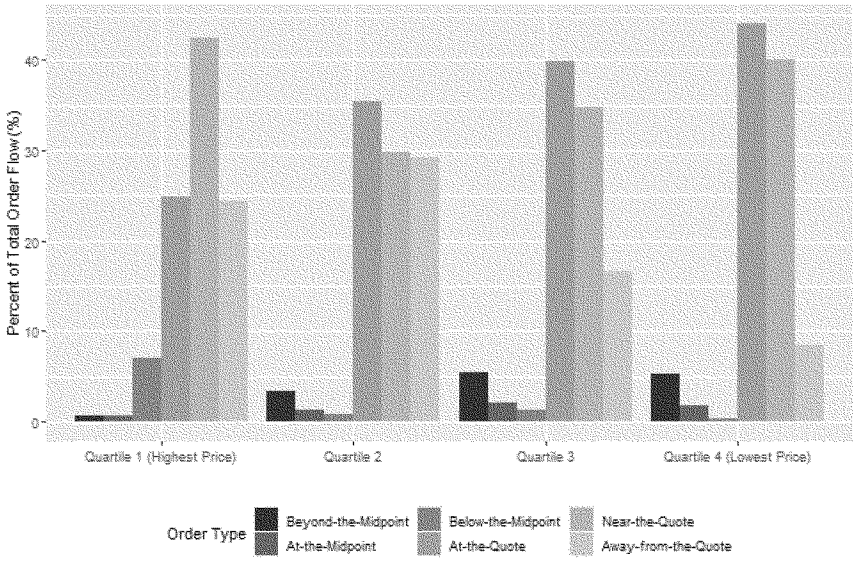

Figure 9: Order Submission Share Volume by NMLO Type and Stock Price Quartiles, March 2022. This figure plots the percent of order flow that can be categorized into various NMLO categories, using order submission data from MIDAS. Stocks are split into quartiles based on average stock prices. See supra note 634 for a description of the dataset. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. See supra note 688 and section VII.C.1.d)(2).

(3) Beyond-the-Midpoint Limit Orders

Currently, Rule 605 reports may not accurately reflect how the execution quality of inside-the-quote NMLOs may vary across market centers. The Commission preliminarily understands that some inside-the-quote limit orders may have different execution quality characteristics than other types of NMLOs, and that this may vary across market centers. In particular, the Commission preliminarily understands that some market centers, such as some wholesalers, treat ''beyond-the-midpoint'' limit orders (*i.e.,* NMLOs that are priced more aggressively than the midpoint) like marketable limit orders and will offer price improvement to these orders. However, because they are not a marketable order type (*i.e.,* they do not fully cross the spread), some statistics are not currently calculated for inside-the-quote limit orders, including price improvement statistics and effective spreads.

In order to examine this possibility, Table 5 presents results from an analysis of the execution quality of beyond-the-midpoint NMLOs compared to other order types, including market, marketable limit, and other types of inside-the-quote NMLOs, using a sample of orders executed by the six most active wholesalers from CAT data for the period of Q1 2022.[689] The results show that beyond-the-midpoint NMLOs executed by wholesalers tend to have much faster time-executions and higher fill rates than other types of inside-the-quote NMLOs, and are also somewhat more likely to be given price improvement. Grouping beyond-the-midpoint orders together with other NMLOs obscures the differences in these market centers' treatment of these types of orders, including potential differences in price improvement.

TABLE 5—EXECUTION QUALITY CHARACTERISTICS OF BEYOND-THE-MIDPOINT NMLOS EXECUTED BY WHOLESALERS, Q1 2022

Order type	Average time-to-execution (seconds)	Median time-to-execution (seconds)	Fill rates (%)	Price-improved orders (% total orders)
Market	21.19	0.04	91.0	78.1
Marketable Limit	233.95	3.22	94.0	55.9
Beyond-the-Midpoint NMLOs	1503.31	145.49	94.1	4.6

[689] *See supra* note 609 for dataset description. This dataset is from prior to the implementation of the MDI Rules and the distribution of orders into various NMLO categories, including beyond-the-midpoint orders, may change following the implementation of the MDI Rules. *See supra* note 684 and section VII.C.1.(d)(2). However, it is not clear how a change in the distribution of orders into various NMLO categories would affect the average fill rates and time-to-execution of these NMLO categories. The percent of price-improved orders may also change, depending on how wholesalers adjust their price improvement practices in stocks with narrower spreads. However, it is unclear how the percentage of price-improved beyond-the-midpoint NMLOs would change relative to other types of NMLOs.

TABLE 5—EXECUTION QUALITY CHARACTERISTICS OF BEYOND-THE-MIDPOINT NMLOS EXECUTED BY WHOLESALERS, Q1 2022—Continued

Order type	Average time-to-execution (seconds)	Median time-to-execution (seconds)	Fill rates (%)	Price-improved orders (% total orders)
At-the-Midpoint and Below-the-Midpoint NMLOs	4189.13	1480.60	81.7	1.1

Table 5: Execution Quality Characteristics of Beyond-the-Midpoint NMLOs Executed by Wholesalers, Q1 2022. This table shows execution quality metrics for different order types handled by the top six wholesalers using CAT data during the period of Q1 2022. *See supra* note 609 for dataset description. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. *See supra* note 689 and section VII.C.1.d)(2).

(4) Time-to-Execution

The rapid increase in execution speeds in modern markets has decreased the usefulness of time-to-execution information that is currently required in Rule 605 reports.[690] Currently, time-to-execution information is required in Rule 605 reports in two ways: first, for market and marketable limit orders, the share-weighted average time-to-executions for orders executed with price improvement, at the quote, and with price dis-improvement, calculated based on timestamps recorded in seconds; and second, for all orders, the number of shares executed within certain pre-defined time-to-executions categories.[691]

First, calculating average time-to-execution statistics using timestamps recorded in terms of seconds does not reflect changes in market speeds. Figure 10 uses data from the SEC's MIDAS analytics tool [692] to plot the percentage of on-exchange NMLOs that, conditional on being executed,[693] are fully executed within one second or less from the time of submission between Q4 2012 and Q1 2022. The figure shows that this percentage has increased over time across different market capitalization groups, and that in Q1 2022 more than half (51.6%) of executed NMLOs are executed in less than one second in large market cap stocks. Therefore, while timestamps expressed in seconds may have been appropriate for the markets when Rule 605 was first adopted, they are likely to miss much of the variation in time-to-execution across market centers in today's markets.

Figure 10: Percentage of NMLOs Executed Within One Second, Q1 2012–Q4 2022

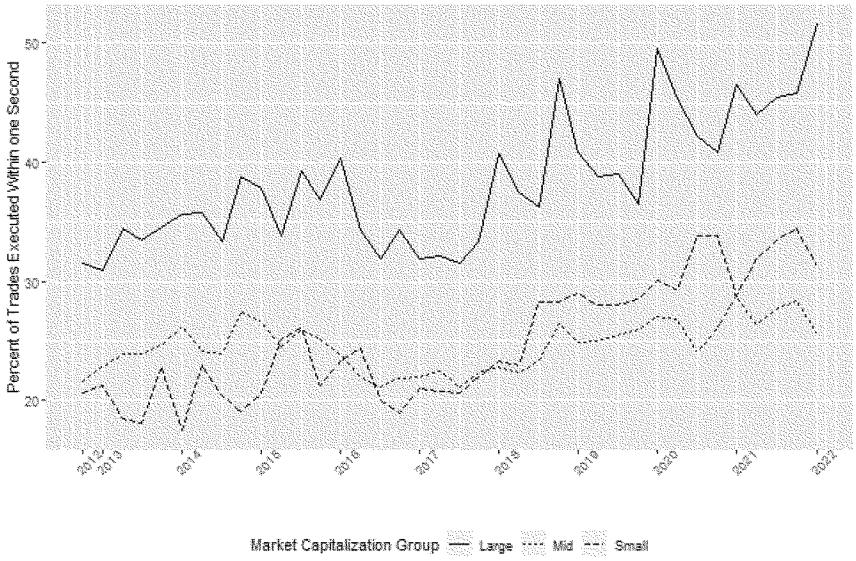

Figure 10: Percentage of NMLOs Executed Within One Second, Q1 2012 - Q4 2022. This figure plots the percentage of NMLOS that, conditional on being executed on a national securities exchange, are executed within one second or less from the time of submission between Q4 2012 and Q1 2022 using data from the SEC's MIDAS analytics tool. See supra note 692 for dataset description.

[690] *See supra* note 133 and accompanying text discussing concerns raised by commenters about the current provisions in Rule 605 for time-to-execution information.

[691] *See supra* note 343 for a definition of these time-to-execution categories.

[692] *See* dataset *Conditional Cancel and Trade Distributions,* SEC, *available at https://www.sec.gov/marketstructure/downloads.html.* If the order is not fully executed, it is treated as canceled at the close. *See Quote Life Report Methodology,* SEC, *available at https://www.sec.gov/marketstructure/quote-life-report-methodology.*

[693] *I.e.,* Figure 10 plots the number of fully executed NMLOs executed within one second relative to the total number of fully executed on-exchange NMLOs. Note that, in contrast, Figure 8 plots the number of executed NMLO shares divided by the total number of submitted NMLO shares.

Second, given that many orders are executed on a sub-second basis, the current time-to-execution buckets prescribed by Rule 605 are not able to fully capture variations in time-to-executions across order types.[694] To illustrate this, Figure 11 groups on-exchange NMLO executions collected from MIDAS for the period of March 2022 [695] into time-to-execution buckets that correspond to those currently defined in Rule 605. The figure shows that, while the distribution of orders looks reasonable for away-from-the-quote and near-the-quote NMLOs, for which executions are relatively evenly distributed across the time-to-execution categories, these categories do not capture much differentiation for other NMLO types, particularly for those that take place inside the quote. For inside-the-quote NMLOs, 84.2% to 85.7% of orders are grouped in the shortest time-to-execution bucket (from 0 to less than 10 seconds), depending on the distance to the midpoint, while the category corresponding to the longest time-to-execution bucket defined by Rule 605 (5 to 30 minutes) has only 1.1% to 1.3% of executions. Therefore, these time-to-execution categories likely do not fully capture variations in the execution times of these orders across reporting entities.

Figure 11: Distribution of NMLO Execution Times, March 2022

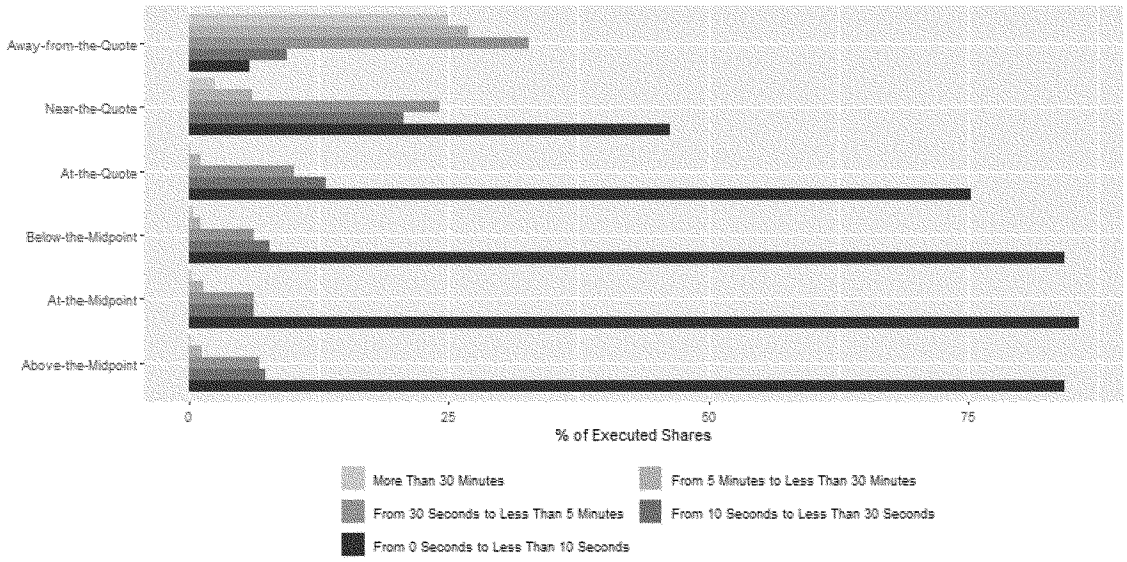

Figure 11: Distribution of NMLO Execution Times, March 2022. This figure plots the distribution of shares across different time-to-execution categories, for different categories of NMLOs, using order submission data from MIDAS. See supra note 634 for dataset description. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. See supra note 695 and section VII.C.1.d)(2).

MIDAS data includes only orders and quotes that are posted on national securities exchanges' LOBs and trades that are executed against those orders,[696] and as such it is not possible to view the submission times (and thus calculate the time-to-execution of) market and marketable limit orders using MIDAS data. As a result, the above analysis is only able to consider the time-to-execution of on-exchange NMLOs. In order to estimate the time-to-execution of both on- and off-exchange orders, including market and marketable limit orders, the Commission used the Tick Size Pilot B.I Market Quality data from April 2016 until March 2019.[697]

[694] *See supra* note 343 for a definition of these time-to-execution categories.

[695] *See supra* note 634 for data description. Note that this dataset includes only NMLOs submitted to exchanges that do not immediately execute and are subsequently posted to the limit order book. The results of this analysis may not reflect the execution quality of inside-the-quote NMLOs that execute immediately, *e.g.,* against hidden liquidity on the limit order book. Furthermore, this dataset is from prior to the implementation of the MDI Rules and the distribution of orders into various NMLO categories may change following the implementation of the MDI Rules. *See supra* note 684 and section VII.C.1.(d)(2). However, it is not clear how a change in the distribution of orders into various NMLO categories would affect the average time-to-execution of these NMLO categories.

[696] *See supra* note 634. MIDAS data includes information about off-exchange trade executions, but not information about any off-exchange order submissions, so it is also not possible to use MIDAS data to calculate the time-to-execution of off-exchange orders.

[697] *See supra* note 619 for data description. Note that, as the Tick Size Pilot only collected data for small cap stocks, these execution times are not necessarily representative of all stocks. For example, larger market cap stocks are typically more liquid and likely execute faster. Also, as this is an older data set (April 2016 until March 2019), it may be that market speeds have changed since this time. However, as it is likely that market speeds have only gotten faster since this time period, it could represent a lower bound on execution times and therefore still give an idea of how relevant the current Rule 605 time-to-execution buckets are for market and marketable limit orders. Lastly, this dataset also includes off-exchange orders, while the MIDAS data only includes on-exchange orders, which could result in different execution times between the two datasets. Furthermore, this dataset is from prior to the implementation of the MDI Rules and the distribution of orders into various NMLO categories may change following the implementation of the MDI Rules. *See supra* note 684 and section VII.C.1.(d)(2). However, it is not clear how a change in the distribution of orders into various NMLO categories would affect the average time-to-execution of these NMLO categories.

Figure 12 shows the distribution of time-to-execution statistics for market and marketable limit orders, along with the three categories of non-marketable limit orders currently required in Rule 605 reports (*i.e.,* inside-the-quote, at-the-quote, and near-the-quote). Note that the time-to-execution categories defined in the Tick Size Pilot dataset are more granular than those in Rule 605.

Figure 12: Distribution of Order Execution Times, April 2016–March 2019

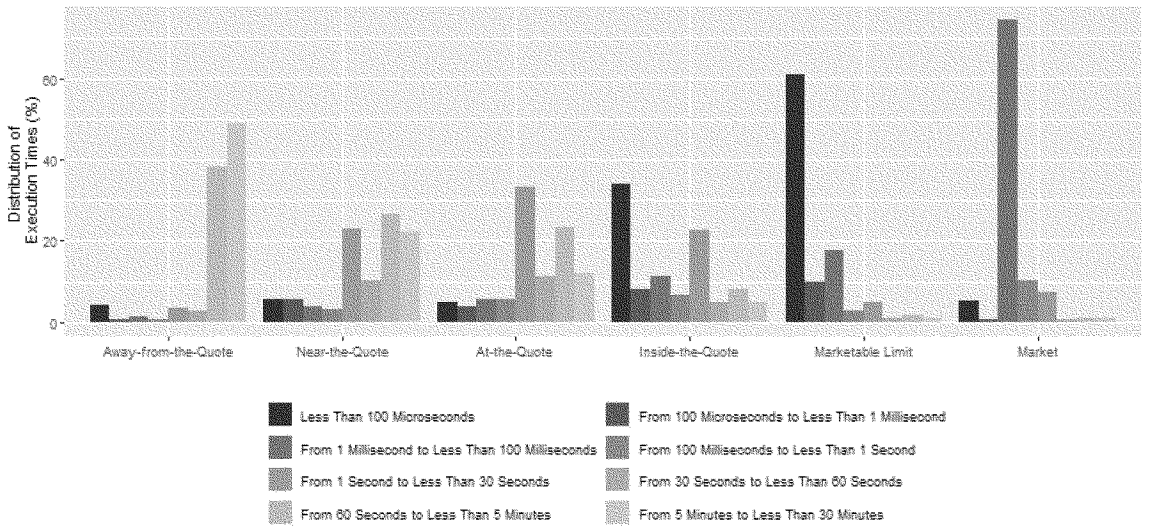

Figure 12: Distribution of Order Execution Times, April 2016 – March 2019. This figure plots the distribution of execution times across different time-to-execution categories, for market orders, marketable limit orders, and different categories of NMLOs. See supra note 619 for dataset description. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. See supra note 697 and section VII.C.1.d)(2).

Echoing the results using MIDAS data in Figure 11, Figure 12 shows that, for at-the-quote and near-the-quote limit orders, executions are reasonably well distributed across the different time-to-execution buckets and there is positive volume in the longer time-to-execution buckets that are included in both the Rule 605 and Tick Size Pilot categorizations (30 to 59 seconds, 60 to 299 seconds, and 5 to 30 minutes). However, similar to the results for inside-the-quote NMLOs, for market and marketable limit orders, execution times are mostly bunched up at the faster end of their time buckets; in fact, the vast majority of these orders are executed in under one second, falling within the shortest Rule 605 category of shares executed from 0 to 9 seconds. Likewise, the longer time-to-execution buckets that are included in both the Rule 605 and Tick Size Pilot categorizations are virtually empty. Therefore, as with inside-the-quote NMLOs, current Rule 605 time-to-execution categories are missing information about potential differences across reporting entities in terms of the execution times of the market and marketable limit orders that they handle, which limits the usefulness of time-to-execution information for investors.[698]

(5) Effective and Realized Spreads

The Commission believes that current requirements in Rule 605 related to measures of effective and realized spreads may lead to uninformative or incomplete information.

First, because of the increase in the speed at which markets operate,[699] the requirement to use a five-minute benchmark to calculate realized spreads[700] may limit the ability of the Rule 605 realized spreads to measure what they are intended to measure, *i.e.,* the adverse selection risk associated with providing liquidity at a market center. Liquidity providers face adverse selection risk when they accumulate inventory, for example by providing liquidity to more informed traders, because of the risk of market prices moving away from market makers before they are able to unwind their positions.[701] Realized spreads are calculated by comparing an order's transaction price to the NBBO midpoint five minutes later (*i.e.,* an estimate of the average expected trade price). Smaller (or even negative) realized spreads reflect that market prices have moved away from market makers, which is usually a reflection of order flow with

[698] Academic literature suggests that time-to-execution information would be especially useful for institutional investors with short-lived private information, who profit from trading against other, slower institutions. *See, e.g.,* Ohad Kadan, Roni Michaely & Pamela C. Moulton, *Trading in the Presence of Short-Lived Private Information: Evidence from Analyst Recommendation Changes,* 53 J. Fin. Quantitative Analysis 1509 (2018). Time-to-execution information would also benefit institutions that engage in market making, as one study shows these institutions are likely to rely on speed to reduce their exposure to adverse selection and to relax their inventory constraints. *See* Jonathan Brogaard, Bjorn Hagströmer, Lars Nordén & Ryan Riordan, *Trading Fast and Slow: Colocation and Liquidity,* 28 Rev. Fin. Stud. 3407 (2015).

[699] *See supra* section VII.C.2.(c)(4) for a discussion of evidence of increased market trading speeds.

[700] *See* 17 CFR 242.600(b)(9). *See also supra* note 359 and accompanying text for a further discussion of the definition of the realized spread.

[701] For example, if a liquidity provider provides liquidity to an informed trader, who is selling its shares because it knows that the share price is about to drop, the market maker will accumulate a long position in the stock. If the market maker were to immediately try to unwind this position in the market, the share price may have already dropped and the market maker will have to sell at a lower price than what it paid for the shares.

greater adverse selection risk. Therefore, all else being equal, if a market center reports favorable execution quality measures but a low or negative realized spread, this would reflect that the market center is still providing liquidity even during adverse market conditions.

Selecting an appropriate time horizon to calculate the realized spread must strike a balance between too short, which could distort the measures by transitory price impact, and too long, which could measure noise [702] or the cumulative impact of subsequent market changes which are unrelated to the order's execution quality. An ideal measurement horizon would be one that aligns with the amount of time an average liquidity provider holds onto the inventory positions established from providing liquidity, which is not easily observable. A number of academic studies argue that the five-minute horizon is too long for a high-frequency environment.[703] As one paper puts it, ''five minutes is a 'lifetime', and so is not a meaningful time frame in which to evaluate trading.'' [704] Another paper shows that realized spreads will generally increase as the time horizon that they are calculated over is shortened, highlighting that realized spreads are highly dependent on the time horizon over which they are calculated.[705]

In order to see how using different time horizons for calculations of realized spreads can affect comparisons across market centers, using TAQ data for a sample of 400 stocks in February 2021,[706] the Commission calculated the average realized spreads across 15 different market centers, measured using six different time horizons: 1 second, 5 seconds, 10 seconds, 15 seconds, 1 minute, and 5 minutes. The results are presented in Figure 13, and support the findings from the empirical literature, that the choice of time horizon is non-trivial and realized spreads are generally increasing as the time horizon decreases.[707]

Figure 13: Average Realized Spreads by Market Center and Time Horizon, February 2021

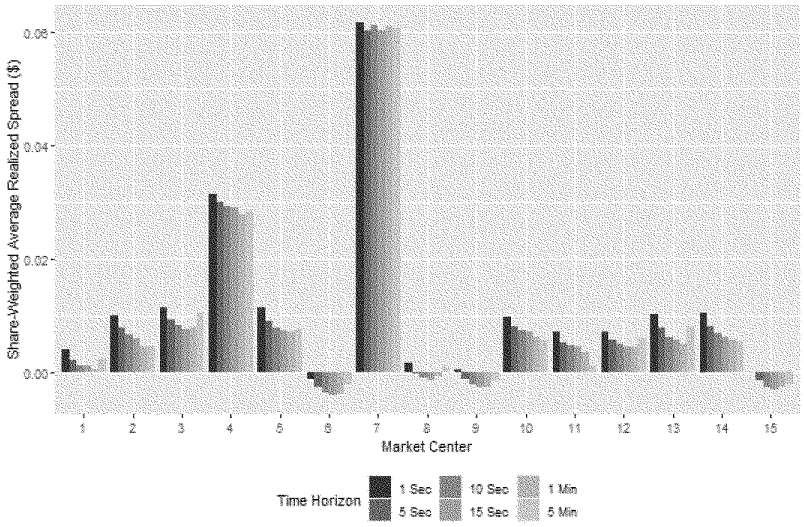

Figure 13: Average Realized Spreads by Market Center and Time Horizon, February 2021. This figure plots the share-weighted average realized spread using different time horizons, across 15 different national securities exchanges, using data from TAQ. See supra note 706 for dataset description. Measures grouped by exchange were calculated on a stock-day basis, then weighted according to the formula: Measures of Stock *i* on Market Center *j* × (Volume of Stock *i* across All Market Centers / Volume of All Stocks across All Market Centers). To account for the fact some stocks did not trade on some market centers on some days, in those instances, the stock-day-exchange measure was replaced by the corresponding measure across all market centers. The measures were then summed up by stock and averaged across trading days. This weighting avoids cases in which a market center may have a higher dollar realized spread because it had more trading volume in high-priced stocks, which tend to have higher realized spreads by construct. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. See supra note 707 and section VII.C.1.d)(2).

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[702] The term ''noise'' is used throughout in the statistical sense and refers to unexplained or unrelated variability in observations that degrades the efficiency of computed statistics or estimators.

[703] *See, e.g.,* O'Hara 2015; O'Hara et al.; Conrad and Wahal.

[704] *See* O'Hara 2015. The author argues that the use of a five-minute time horizon to calculate realized spreads leads to spreads that are nearly always negative, which is inconsistent with their interpretation as returns to market-making. The implication is that the five-minute time horizon is too noisy.

[705] *See* Conrad and Wahal.

[706] Using CRSP data from the last trading day in February 2021, the Commission selected 400 stocks, 100 each from 4 size quartiles: under $100 million, $100 million to $1 billion, $1 billion to $10 billion, and over $10 billion. Within each market cap group, the Commission split the stocks into 4 quartiles based on price and selected 25 stocks from each price quartile evenly spaced within the quartile. The Commission manually replaced 3 stocks in the smallest size quartile with a price and sized matched stock because they had very little trading volume. The Commission limited its analysis to trades during regular market hours without an irregular sale condition. Analysis derived based on data from CRSP 1925 US Stock Database, Ctr. Rsch. Sec. Prices, U. Chi. Booth Sch. Bus. (2022).

[707] This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. Specifically, the NBBO midpoint in stocks priced higher than $250 could be different under the MDI Rules than it otherwise would be, resulting in changes in the estimates for statistics calculated using the NBBO midpoint, such as realized spreads. While specific numbers might change, the Commission does not expect the relative variation in realized spreads across different time horizons to change as a result of the implementation of MDI. *See supra* section VII.C.1.(d)(2) for further discussion.

These differences can have implications for comparisons across market centers as well. As shown in Figure 13, while Market Centers 8 and 9 have positive realized spreads using the shortest time horizon, their spreads are mostly negative at longer time horizons. As a result, an assessment of whether these market centers have higher or lower realized spreads (*i.e.,* more or less adverse liquidity conditions) as compared to, say, Market Center 6, depends on the time horizon used. Therefore, the choice of interval can not only affect the interpretation of realized spreads as a measure of liquidity conditions, but also affect comparisons across market centers.

From the results of this analysis, it is unclear whether the choice of any specific measurement horizon results in realized spreads more accurately measuring adverse selection risk, as the ''ideal'' measurement horizon is not easily observable. However, given the higher frequency of trading today, it is likely that the use of a five-minute horizon for realized spreads limits the extent to which these measures are able to capture adverse selection risk, making it more difficult to compare conditions for liquidity providers across market centers.

Second, reporting entities are currently not required to include information about the effective spreads of NMLOs in Rule 605 reports, which means that neither individual nor institutional investors have access to information about this dimension of execution quality for their NMLOs. The effective spread is calculated by comparing the trade execution price to the midpoint of the prevailing NBBO at the time of order receipt, which is used as an estimate of the stock's value.[708] For market and marketable limit orders, the effective spread captures how much more than the stock's estimated value a trader has to pay for the immediate execution of its order. For NMLOs, instead of capturing a cost of immediacy, the effective spread captures how much the limit order provider expects to earn (*i.e.,* pay less than or receive more than the stock's estimated value, depending on whether its order is to buy or sell) from the execution of its limit order.[709] This measure of the expected benefits to liquidity provision contains information that may otherwise be useful to investors, but is currently missing in Rule 605 reports.[710]

Lastly, the fact that Rule 605 reports only contain information on average realized and average effective spreads in terms of dollar amounts makes it difficult for market participants to account for differences in share prices when comparing across market centers.[711] While spreads in dollar terms can be useful for participants because they can reflect a cost of (or benefit to) trading in terms that are easy to interpret, it is also the case that, since the effective spread is a per-share cost, the real costs to investors captured by the effective spread can be very different, depending on the stock price.[712] All else being equal, spread measures tend to be higher in dollar terms for higher-priced stocks. As different reporting entities handle and/or transact in different mixes of stocks, this may make it difficult for market participants who may want to compare reporting entities' overall price performance or their performance for baskets of stocks to aggregate across effective spreads.[713]

Also, measuring spreads in absolute terms may lead to comparisons across reporting entities that do not take into account potential differences in the timing of order flow, particularly for stocks whose prices vary significantly over the course of the monthly reporting period. For example, say that a stock's price increased dramatically over the course of a month from $2.50 to $250 and that, by chance, Market Center A executed more order flow for that stock at the beginning of the month, while Market Center B executed more order flow for that stock at the end of the month. In its Rule 605 report for that month, Market Center A showed an average effective spread of $0.01, while Market Center B showed an average effective spread of $0.10. Measured in dollar terms, Market Center B would seem to have offered worse execution prices than Market Center A, since it is associated with higher effective spreads. However, relative to the stock price, Market Center B would actually have the offered the better prices (a percentage effective spread of 0.04%) compared to Market Center A (a percentage effective spread of 0.4%).[714] This illustrates that a market center's spread measures may be higher in dollar terms, but not necessarily because it offered worse execution performance; instead, these differences in spread measures may simply reflect changes in the stock's dollar price and the timing of market center's order flow.

(6) Price and Size Improvement

The current measure of price improvement required for Rule 605 reports may not succeed in always capturing price improvement relative to the best available prices. Currently, market centers are required to report price improvement as the difference between the trade price and the NBBO.

[708] *See, e.g.,* Bjorn Hagströmer, *Bias in the Effective Bid-Ask Spread,* 142 J. Fin. Econ. 314 (2021). *See infra* section VII.E.3.(c)(3) discussing potential issues with using the midpoint to calculate effective spreads.

[709] The interpretation of effective spreads for NMLOs is different from that of realized spreads. Effective spreads capture 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 realized its profit. Meanwhile, realized spreads capture what it actually earns, taking into account that the market price may have moved against the liquidity provider before it could unwind its position. *See supra* note 701 and accompanying text. Therefore, while the effective spread measures the expected benefits to liquidity provision, the realized spreads measure its riskiness.

[710] Both individual and institutional investors provide liquidity through the use of NMLOs. *See supra* note 680.

[711] In theory, market participants could also control for differences in share prices by matching up stock-level information from Rule 605 reports to, *e.g.,* information on the stock's average stock price from that month. However, this would require market participants who wish to control for differently-priced stocks to go through the extra step of gathering and matching stock price information to Rule 605 data, which may be an unreasonable expectation, particularly for individual investors with limited resources. Furthermore, while a monthly average might well capture the prevailing stock price for any given execution for a stock with low price volatility, it might not be a good representation of the prevailing stock price for executions in stocks with high price volatility.

[712] To illustrate, consider an investor that wants to acquire a $10,000 position in a $250 stock with an effective spread of $0.01; the investors will have to pay about $0.40 to purchase 40 shares of the stock. Now consider an investors who wants to acquire a $10,000 position in a $2.50 stock with an effective spread of $0.01; the investor would have to pay around $4.00 to acquire 400 shares. In other words, even though the dollar effective spread was the same, it was ten times more expensive for the investor to accumulate a position worth the same dollar amount in the lower-priced stock.

[713] While the main purpose of Rule 605 is to facilitate comparisons across reporting entities on the basis of execution quality within a particular security, the Commission understands that access to aggregated information is useful for market participants. The proposed amendment to require reporting entities to prepare summary reports that aggregate execution quality information for S&P 500 stocks, along with all NMS stocks, would give market participants access to aggregate effective spreads for one commonly used basket of stocks. Meanwhile, per-stock percentage spread information would enhance market participants' ability to aggregate effective spread information across baskets of stocks other than the S&P 500.

[714] To illustrate how the percentage effective spread can reflect different costs in real terms, consider if one customer acquired a $10,000 stake in the stock at the beginning of the month (*i.e.,* $10,000/$2.50 = 4,000 shares); a per-share effective spread of $0.01 means that the customer's cost of acquiring the position would have been $40. Meanwhile, another customer acquired a $10,000 stake at the end of the month (*i.e.,* $10,000/$250 = 40 shares); a per-share effective spread of $0.10 means that the customer's cost would have been only $4.

However, a recent academic working paper shows that odd-lots offer better prices than the NBBO 18% of the time for bids and 16% of the time for offers.[715] If an order executes against a resting odd-lot with a price better than the NBBO, the execution would result in positive price improvement according to the current Rule 605 reporting requirements. In cases where this occurs, this positive price improvement is the result of an inadequate benchmark price being used, and not the same as if the market center were to actively offer the order at a price better than the best available market price, which is what price improvement is typically intended to measure.

Furthermore, such positive price improvement may actually reflect price dis-improvement, once all available displayed liquidity is taken into account. For example, if a market center internalizes an order with $0.05 of price improvement relative to the NBBO, but odd-lots are available on another market center at prices that are $0.10 better than the NBBO, the market center would post a price improvement measure of $0.05, even though the investor could have received a better price if the market center had routed the order to execute against the available odd-lot liquidity instead of internalizing the order. As a result, current measures of Rule 605 may overstate the amount of price improvement offered by some market centers.

Information about price improvement is different from information about whether orders received an execution of more than the displayed size at the quote, *i.e.,* ''size improvement.'' The price improvement metrics currently required by Rule 605 do not necessarily capture a market center's ability to fill orders beyond the liquidity available at the NBBO.[716] For example, consider a situation in which the market is $10.05 × $10.10 with 100 consolidated shares available at the NBO of $10.10 and 100 consolidated shares available at the next best ask price of $10.15. Say that a trader submits a marketable buy order for 200 shares to a market center, which fills the entire order at the best ask price of $10.10. The market center's Rule 605 statistics would reveal a price improvement metric of $0 for this order, despite the fact that the trader saved money by avoiding having to walk the book, which would have resulted in a total price of (100 * $10.10) + (100 * $10.15) = $2,025. As a result of the market center's ability to offer this ''size improvement,'' the trader saved an average of $10.125 $− $10.10 = $0.025 per share. This information about execution quality is not reflected in the market center's price improvement statistics.

As the Commission stated in the Adopting Release, the average effective spread captures some information about size improvement.[717] The effective spread is calculated by comparing the trade execution price with the midpoint of the NBBO, rather than with the NBBO itself. In this way, it captures the full range of available liquidity at a market center and not merely the displayed orders that determine the NBBO. The effective spread will be larger for orders that are larger than liquidity available at the NBBO and are required to walk the book. Therefore, generally speaking, a market center that offers greater size improvement will tend to have a lower average effective spread (*i.e.,* these measures will be negatively correlated).[718] However, as this measure contains information about both size and price, it may be difficult to disentangle information about size improvement from information about price improvement when interpreting average effective spreads.[719] Therefore, investors that particularly value the ability of market centers to offer size improvement, such as investors trading in larger order sizes, would not currently be able to use the metrics currently contained in Rule 605 reports to easily discern which market center would better handle their order according to this dimension of execution quality.[720]

(7) Marketable IOCs

The Commission preliminarily believes that grouping marketable IOCs together with other marketable limit orders may lead to a downward skew on the execution quality metrics (specifically, derived estimates of fill rates) for market centers that handle a large amount of IOCs, which would hinder the extent to which these metrics could be used to accurately compare execution quality across market centers. At least one commenter to the 2010 Concept Release on Equity Market Structure pointed out that IOCs may have a different submitter profile (typically, institutional investors) and different execution quality characteristics than other types of orders.[721] Furthermore, an analysis using CAT data[722] of retail orders received at larger retail brokers during June 2021 indicate that approximately only 0.02% of individual investor

[715] *See* Bartlett et al. (2022). The authors found that this percentage increases monotonically in the stock price, for example, for bid prices, increasing from 5% for the group of lowest-price stocks in their sample, to 42% for the group of highest-priced stocks.

[716] An analysis of data from the Tick Size Pilot B.II Market and Marketable Limit Order dataset reveals that nearly 7% of orders had sizes greater than the liquidity available at the NBBO between April 2016 and March 2019. *See infra* note 723 for data description. *See also supra* note 406 and accompanying text. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. Specifically, the MDI Rules could result in a smaller number of shares at the NBBO for stocks in higher-priced round lot tiers, increasing the number of orders with sizes greater than the NBBO. *See supra* section VII.C.1.(d)(2) for further discussion.

[717] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75425.

[718] For example, assume that a trader submits a marketable buy order for 100 shares to a $10.05 × $10.10 market with 100 consolidated shares available at the NBO of $10.10 and 100 consolidated shares available at the next best ask price of $10.15. In this case, the effective spread would be 2 * ($10.10 − $10.075) = $0.05, reflecting that the trader had to pay an average of $0.05 more per share than the NBBO midpoint. Now consider the situation in which the trader instead submits a marketable buy order for 200 shares to a market center (''Market Center A'') that walks the order up the book. In this case the effective spread will be twice as high, 2 * ($10.125 − $10.075) = $0.10. This higher effective spread reflects the need for Market Center A to use volume beyond the best quote to fill the order. If, on the other hand, instead of walking the 200-share order up the book, a market center (''Market Center B'') fills the entire buy order at the current NBO of $10.10; the effective spread would only be $0.05. The ability of Market Center B to execute an order for more than the displayed size at the quote is therefore reflected in an effective spread that is lower than that of Market Center A.

[719] To illustrate, consider the example in *supra* note 718, but, instead of 200 shares, the trader's order was for 100 shares and Market Center A executed the order with an average price dis-improvement of $0.025; the effective spread for Market Center A would similarly be $0.10. Furthermore, consider a situation in which the market is wider at $10.12 × $10.02 and Market Center B executes the 100-share order with an average price improvement of $0.025 per share, while Market Center A executes it without any price improvement. Both of these cases would lead to the same effective spreads (an effective spread of $0.10 for Market Center A, and an effective spread of $0.05 for Market Center B) as the above-described scenario in which Market Center B offered size improvement and Market Center A did not, but for situations in which the order size is less than or equal to the displayed size at the quote.

[720] For example, compare the example of Market Center B offering size improvement to a 200-share order in note 718, *supra,* to the example of Market Center B offering price improvement to a 100-share order in note 719, *supra.* A trader that tends to submit 200-share orders would want to know a market center's ability to offer the first scenario, while a trader that tends to submit 100-share orders would want to know the market center's ability to offer the second scenario. However, in both examples the Rule 605 report would show an effective spread statistic of $0.05 for orders in the order size category of 100–499 shares, which means that these traders would not be able to use this statistic to discern a market center's execution quality according to the dimension of execution quality that they find most valuable.

[721] *See supra* note 326 and accompanying text.

[722] *See supra* note 609 for dataset description.

orders are submitted with an IOC instruction.

To examine whether IOC orders have different execution quality characteristics than other types of orders, an analysis was performed using data from the Tick Size Pilot B.II Market and Marketable Limit Order dataset,[723] which includes a flag indicating whether a market or marketable limit order has been marked as IOC. The results are presented in Table 6 and show that IOCs indeed may have different execution quality, as they typically have much lower fill rates (3.22%) than other market and marketable limit orders (15.94%), particularly for larger-sized orders. Therefore, the inclusion of IOCs along with other types of market and marketable limit orders may skew the execution quality of these other orders types, particularly since IOCs make up more than 90% of market and marketable share volume.

TABLE 6—IMMEDIATE-OR-CANCEL (IOC) SHARE VOLUME, OCTOBER 2018–OCTOBER 2019

	IOC volume (% of share volume)	Fill rate (IOC)	Fill rate (non-IOC)
Market Centers Other than Wholesalers:			
Less than 100 shares	88.1	39.6	15.4
100 to 499 shares	88.9	14.8	11.5
500 to 1,999 shares	84.6	5.4	6.5
2,000 to 4,999 shares	89.3	3.0	8.1
5,000 to 9,999 shares	91.6	1.3	7.5
10,000 or more shares	92.8	0.3	3.8
Wholesalers:			
Less than 100 shares	33.6	30.1	67.1
100 to 499 shares	70.7	13.4	48.1
500 to 1,999 shares	66.6	5.6	95.0
2,000 to 4,999 shares	54.8	4.3	93.7
5,000 to 9,999 shares	59.0	2.1	84.5
10,000 or more shares	83.8	0.3	60.7
All Market Centers and Order Sizes	90.04	3.22	15.94

Table 6: Immediate-Or-Cancel (IOC) Share Volume, October 2018–October 2019. This table shows the percentage of market and marketable limit orders submitted with IOC instructions, along with the fill rates of those orders, using data from the Tick Size Pilot B.II Market and Marketable Limit Order dataset. *See supra* note 723 for data description. This dataset contains an ''IOC'' flag, which is equal to ''Y'' if the order is an IOC order. The Commission excluded orders outside of regular trading hours and identified retail wholesaler orders as orders originating from seven trading center codes that the Commission understands to be retail wholesalers.

This is especially likely to be the case for wholesalers. The Commission understands that IOC orders received by wholesalers are typically institutional orders that are pinged in the wholesalers' SDPs to see if any contra-side volume is available. This is supported by Table 6, which shows that the differences between fill rates for IOC and non-IOC orders are particularly stark for these market centers: While wholesaler fill rates range between 60% and 95% for non-IOC orders, they are mostly below 30% for IOC orders, and even smaller for larger order sizes, dropping to just 0.3% for orders for 10,000 shares or more. This is again consistent with the idea that wholesalers' IOC orders may represent institutional orders that are routed to their SDPs. Co-mingling SDP activity with other market center activity may obscure differences in execution quality or distort the general execution quality metrics for the market center.[724] Similarly, grouping together IOC orders along with other types of market and marketable orders could impose a significant downwards skew on the fill rates, in particular for larger order sizes and orders handled by wholesalers. This may impact market centers' incentives to achieve better execution quality for marketable orders.[725]

(8) Riskless Principal Orders

The Commission believes that current reporting of riskless principal transactions[726] leads to the duplicative reporting of these orders, and creates uncertainty about how many orders are internalized by off-exchange market centers, particularly wholesalers.

In a riskless principal transaction, a market center routes a principal order to a second market center, typically an exchange or ATS, in order to fulfill a customer order; upon execution at the second market center, the first market center executes the customer transaction on the same terms as it received from the principal execution at the second market center. Currently, for the purposes of Rule 605 reporting, both the first and second market centers in this example would report the riskless principal transaction as having been executed at the market center under Rule 605(a)(1)(i)(D), rather than as a part of the cumulative number of shares of covered orders executed at any other venue under Rule 605(a)(1)(i)(E).[727]

[723] *See* Tick Size Pilot Plan. This dataset contains information for approximately 2,400 small cap stocks for a period from April 2016 to March 2019. Orders with special handling codes are discarded, as are orders marked as short sales (''SS''). Note that, as the Tick Size Pilot collected data only for small cap stocks, these time-to-executions are not necessarily representative of all stocks. For example, larger market cap stocks may be traded more actively by institutional investors, and therefore would likely have higher IOC volumes.

[724] *See supra* section VII.C.2.(a)(2) for further discussion of co-mingling SDP activity with other market center activity.

[725] For example, if a market center's Rule 605 reports reveals low fill rates for market orders simply because it handles a large amount of marketable IOCs, it may not be incentivized to improve its fill rates for other types of market orders since the higher fill rates of these orders would be obscured by the low fill rates of marketable IOCs.

[726] *See supra* note 416 and accompanying text for a definition and discussion of riskless principal transactions.

[727] *See supra* note 417 and accompanying text. In contrast, for the purposes of SIP reporting, the away market center is required to report the principal transaction to the tape, while the receiving market center would post a non-tape (regulatory or clearing-only) report to reflect the offsetting riskless customer transaction. When the initial leg of the transaction takes place on and is reported through an exchange, members are instructed not to report the customer transaction for public dissemination purposes, as that would result in double (tape) reporting of the same transaction. *See* Trade Reporting Frequently Asked Questions, answers to Questions 302.2 and 302.4, *available at https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq.*

The Commission believes that, particularly in the case of riskless principal transactions that are handled by wholesalers, grouping transactions that are handled on a riskless principal basis together with other orders executed at the market center under Rule 605(a)(1)(i)(D) may obscure information about the extent to which wholesalers internalize orders. Wholesalers primarily choose between two options to execute the individual investor orders that they handle: they either internalize orders by executing orders against their own capital, or they execute orders on a riskless principal basis.[728] While wholesalers' internalized orders are not exposed to competition from other interested parties quoting on external market centers, their riskless principal executions expose individual investor orders to trading interest from market participants other than the wholesaler, which has potential implications for differences in execution quality between these two order types. Currently, both types of orders would be categorized together as orders executed at the market center under Rule 605(a)(1)(i)(D), so market participants would not be able to tell from Rule 605 reports whether a wholesaler internalizes the majority of its individual investor order flow, or executes the majority as riskless principal. Thus, key information that would be useful for investors (particularly individual investors, whose orders are overwhelmingly handled by wholesalers [729]) when interpreting and comparing information about wholesalers' execution quality is currently missing from Rule 605 reports.

(d) Accessibility of Current Rule 605 Reports

Rule 605 currently requires market centers to post their monthly reports on an internet website that is free of charge and readily accessible to the public.[730] There is currently no system or requirement in place for the centralized posting of Rule 605 reports, which results in search costs for market participants. In order to collect a complete or mostly complete set of Rule 605 reports to, for example, select the reporting entity offering the best execution quality in a given stock, a market participant would need to perform the following tasks, for each of the estimated 236 reporting entities that are currently required to prepare Rule 605 reports: [731] first, search the internet for the website(s) of the reporting entity; second, find the area of the reporting entity's website(s) that links to its Rule 605 report; and third, find the correct link and download the appropriate report (or multiple reports, if the information for multiple months is desired).

The process of collecting Rule 605 reports may be simplified by the NMS Plan's requirement that each market center must designate a single Participant to act as the market center's Designated Participant, who is tasked with maintaining a comprehensive list of the hyperlinks provided by its market centers.[732] Furthermore, certain reporting entities' use of third-party vendors to prepare and/or collect Rule 605 reports may also simplify the process of collecting Rule 605 reports, as these vendors typically maintain a centralized repository of the reports that they handle.[733] However, because an individual vendor or Designated Participant may only offer a subset of Rule 605 reports or hyperlinks to reports, which may not be a representative sample of reports, it is still the case that collecting the complete or even a mostly comprehensive set of Rule 605 reports could entail search costs.[734] In order to collect a complete set of reports, market participants may still need to search the websites of and collect reports from multiple vendors or Designated Participants.

3. Markets for Brokerage and Trading Services for NMS Stocks Under Current Rule 605 Disclosure Requirements

(a) Brokerage Services for NMS Stocks

(1) Current Structure of the Market for Brokerage Services

Based on information from broker-dealers' FOCUS Report Form X–17A–5 Schedule II, there were 3,498 registered broker-dealers as of Q2 2022. A portion of these broker-dealers focus their business on individual and/or institutional investors in the market for NMS stocks.[735] These include 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.[736] The Commission estimates that there are approximately 153 broker-dealers that carry at least one customer trading in NMS stocks and options, [737] and 1,110 broker-dealers that introduce at least one customer trading in NMS stocks and options.[738]

When a customer places an order in an NMS stock with a broker-dealer, the broker-dealer acts as an agent on behalf of that customer, who generally wants to receive the best possible execution of their order.[739] These broker-dealers can generally decide how to route that order for execution to an exchange, a wholesaler, or an ATS, where the trade

[728] *See infra* section VII.C.3.(b)(1) for further discussion of the market for trading services, which includes wholesalers.

[729] *See supra* note 614 for results from an analysis of retail brokers' routing practices.

[730] *See* 17 CFR 242.605(a)(2) (requiring market centers to make their Rule 605 reports ''available for downloading from an internet website that is free and readily accessible to the public. . . .'').

[731] *See supra* section VI.C for a discussion of the estimated number of reporting entities under the proposed amendments.

[732] *See* Section VIII of the Rule 605 NMS Plan. For a description of ''Designated Participant'' as defined in the Plan, *see supra* note 47.

[733] *See, e.g., Disclosure of SEC—Required Order Execution Information,* S&P Global, *available at https://vrs.vista-one-solutions.com/sec605rule.aspx.*

[734] For these reasons and others, EMSAC has suggested considering a centralized location for 605 reports. See EMSAC Recommendations Regarding Rule 605 and 606, SEC, 4, available at https://www.sec.gov/spotlight/emsac/emsac-recommendations-rules-605-606.pdf (stating that ''To further improve standardization and the consistency of reporting, the SEC could consider centralizing report creation in an unbiased and trusted source such as FINRA.''). The Commission also notes that FINRA has proposed requiring members to submit Rule 606(a) order routing reports to FINRA for publication on the FINRA website. See Report from FINRA Board of Governors Meeting, FINRA (Mar. 2022), available at *https://www.finra.org/media-center/newsreleases/2022/report-finra-board-governors-meeting-march-2022* (describing proposed amendments to centrally host SEC Rule 606(a) reports).

[735] Some broker-dealers service only the accounts of other brokers, which are excluded from the definition of customers. *See supra* note 140 for a definition of ''customer.''

[736] *See supra* note 174 for a description of introducing and carrying broker-dealers. Some firms operate a hybrid introducing/carrying broker-dealer by introducing on a fully disclosed basis to a carrying broker-dealer those customers that trade securities for which the broker-dealer is not prepared to provide a full range of services. *See, e.g.,* Securities Exchange Act Release No. 70073 (Aug. 21, 2013), 78 FR 51910 (Aug. 21, 2013) at 51911, 51949, and 51968.

[737] This number is based on the number of broker-dealers that report carrying at least one customer on their 2021 FOCUS Schedule I reports.

[738] This number is based on estimates using broker-dealers FDIDs identified in CAT data during the 2021 calendar year. As CAT data only includes information about NMS stocks and options, broker-dealers that introduce or carry customers trading in other assets classes are not included in these numbers. *See infra* note 1008 for a discussion of the data and methodology for identifying introducing broker-dealers.

[739] Some investors may not value order-level execution quality in all cases. For example, it is the Commission's understanding that when an institutional customer submits a large order to be executed on behalf of one account (*e.g.,* a single mutual fund or pension fund), it expects the broker-dealer that handles and executes such large order to do so in a manner that ensures best execution is provided to the ''parent'' order. *See infra* section VII.C.3.(a)(1)(b) for further discussion.

may be executed or potentially routed further. The high level of fragmentation of NMS stock trading [740] means that broker-dealers have a variety of choices for order routing and execution, and the venue that a broker-dealer chooses may have a tangible effect on the execution quality of an order.

A broker-dealer has a legal duty to seek best execution of customer orders. The duty of best execution predates the federal securities laws and is derived from an implied representation that a broker-dealer makes to its customers.[741] The duty is established from ''common law agency obligations of undivided loyalty and reasonable care that an agent owes to [its] principal.'' [742] This obligation requires that a ''broker-dealer seek to obtain for its customer orders the most favorable terms reasonably available under the circumstances.'' [743]

Investors may incur switching costs when changing broker-dealers, such as the cost of withdrawing or transferring funds and potential administrative fees. Switching broker-dealers could also involve time delays resulting in lost investment opportunities or revenues and other opportunity costs.[744] Furthermore, some customers that rely on broker-dealers' non-execution-related services, such as providing recommendations, holding customers' funds and securities and/or providing analyst research, may find it more costly to switch broker-dealers, as these services would be more difficult to transfer across broker-dealers. However, the Commission understands that some broker-dealers, including some that cater to individual investors, will compensate new customers for transfer fees that their outgoing broker-dealer may charge them, which would result in lower (or even zero) switching costs.[745] The Commission understands that some investors, particularly institutional investors, are likely to use multiple broker-dealers,[746] which would tend to lead to lower switching costs as a customer that is unhappy with one broker-dealer could simply use one of their other broker-dealers to handle those orders.

The Commission understands that the structure of the market for brokerage services can broadly be separated into two distinct markets—brokerage services for individual investors on the one hand, and brokerage services for institutional investors on the other—that differ somewhat in terms of their market structure.

(a) Brokerage Services for Individual Investors

As of the end of 2021, there were approximately 1,037 registered broker-dealers that originated orders on behalf of individual investors in the market for NMS stocks.[747] Unlike institutional investors, individual investors generally use a single broker to handle their orders. Retail brokers can broadly be divided into ''discount'' brokers and ''full-service'' brokers.[748] Competition between discount brokers for the business of individual investors in particular has recently resulted in many new entrants and a decline in commissions to zero or near zero.[749] Instead of commissions on certain transaction, these discount brokers earn revenue through other means, including, among other products and services, interest on margin accounts and from lending securities, as well as broker-wholesaler arrangements involving PFOF paid by the wholesaler to the retail broker. Discount broker-dealers can distinguish themselves by the accessibility and functionality of their trading platform, which can be geared towards less experienced or more sophisticated investors, and by providing more extensive customer service as well as tools for research and education on financial markets.

(b) Brokerage Services for Institutional Investors

As of the end of 2021, there were approximately 909 registered broker-dealers that originated institutional orders in the market for NMS stocks.[750] One feature that distinguishes the market for institutional brokerage services is that a significant portion of institutional investor orders are generally ''not held'' orders.[751] A broker-dealer has time and price discretion in executing a not held order, and institutional investors in particular rely on such discretion for various reasons including minimizing price impact.[752] Due to the large size of institutional trading interests, broker-dealers will often split orders when handling their orders, often through the use of SORs. Specifically, a broker-dealer or its SOR will split up a ''parent'' order into multiple ''child'' orders, with the goal of executing the child orders in a way that achieves the

[740] *See infra* section VII.C.3.(b)(1) for a breakdown of trading in NMS stocks across various types of trading venues.

[741] *See, e.g., Newton* v. *Merrill, Lynch, Pierce, Fenner & Smith, Inc.,* 135 F.3d 266, 270 (3d Cir.), *cert. denied,* 525 U.S. 811 (1998).

[742] *See id.*

[743] *See id. See also* Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) (''Order Execution Obligations Adopting Release''). A Report of the Special Study of Securities Markets stated that ''[t]he integrity of the industry can be maintained only if the fundamental principle that a customer should at all times get the best available price which can reasonably be obtained for him is followed.'' *See* SEC Report of the Special Study of Securities Markets, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. II, 624 (1963) (''Special Study'').

[744] *See, e.g., Understanding the Brokerage Account Transfer Process,* FINRA, *available at https://www.finra.org/investors/learn-to-invest/brokerage-accounts/understanding-brokerage-account-transfer-process.*

[745] *See, e.g.,* Scott Connor, *Thinking about Switching to TD Ameritrade? Transferring is Easier than You Might Think,* TD Ameritrade (Oct. 17, 2019), *available at https://tickertape.tdameritrade.com/investing/how-to-switch-brokers-17755* (''If your broker does charge you a transfer fee, TD Ameritrade will refund you up to $100.'').

[746] For example, one academic paper finds that institutional investors tend to break up larger orders and spread them out across multiple broker-dealers, as a strategy to avoid information leakage. *See, e.g.,* Munhee Han & Sanghyun (Hugh) Kim, Splitting and Shuffling: Institutional Trading Motives and Order Submissions Across Brokers (working paper Sept. 30, 2020), *available at https://ssrn.com/abstract=3429452* (retrieved from SSRN Elsevier database).

[747] This number is estimated using the CAT data described *infra* in note 1008. Individual investor accounts are identified in CAT as accounts belonging to the ''Individual Customer'' account type, defined as accounts that do not meet the definition of FINRA Rule 4512(c) and are also not proprietary accounts. *See supra* note 609 for more information about account types in CAT.

[748] Note that there is not necessarily a precise delineation between full-service and discount brokers. Discount brokers generally provide execution-only services, typically at a reduced or zero commission rate. Full-service brokers (as they are commonly called) typically charge commissions in exchange for a package of services, including execution, incidental investment advice, and custody. *See, e.g.,* Interpretive Rule Under the Advisers Act Affecting Broker-Dealers, Advisers Act Release No. 2652 (Sept. 24, 2007), notes 2 and 20.

[749] *See, e.g.,* Samuel Adams & Connor Kasten, *Retail Order Execution Quality under Zero Commissions,* (working paper Jan. 7, 2021), *available at https://ssrn.com/abstract=3779474* (retrieved from SSRN Elsevier database), describing how ''on October 1st, 2019, Charles Schwab announced that they would cut commissions from $4.95 per trade to zero on all retail trades starting on October 7th. Within hours, TD Ameritrade followed by announcing they would cut commissions to zero from $6.95 beginning on October 3rd. By January 3rd, Vanguard, Fidelity, and E*TRADE had joined the trend in offering free equity trades for retail investors.''

[750] This number is estimated using the CAT data described in *infra note* 1008. Institutional investor accounts are identified in CAT as accounts belonging to the ''Institutional Customer'' account type, defined as accounts that meet the definition in FINRA Rule 4512(c). *See supra* note 609 for more information about account types in CAT.

[751] *See supra* note 538 discussing an analysis showing that institutional investors are more likely than individual investors to use not held orders.

[752] *See* 2018 Rule 606 Amendments Release, 83 FR 58338 nn.60–61 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.

best execution for the parent order.[753] For example, a broker-dealer may not execute a child order at the best price, if doing so could result in a larger price impact and increases the overall cost of working a parent order. For this reason, most institutional parent orders are handled by broker-dealers on a not held basis, which would exclude these orders from Rule 605 execution quality disclosure requirements.[754] However, since 2018, broker-dealers are required by Rule 606(b)(3) to provide individualized reports of execution quality of not held orders upon request.[755]

(2) Competition Between Broker-Dealers on the Basis of Execution Quality

Broker-dealers compete with one another along a variety of dimensions,[756] including the execution quality that they offer, and make their execution quality known in a variety of ways. For example, at least one broker-dealer published execution quality reports using the FIF template,[757] and furthermore some broker-dealers disclose their own execution quality metrics on their websites.[758] Broker-dealers may seek to improve their competitive position on the basis of execution quality by, for example, investing in the speed and quality of their routing technology. Broker-dealers may also compete on the basis of execution quality by reevaluating their routing strategies to increase the extent to which they route orders to the market centers offering better execution quality.

As discussed above,[759] when making routing decisions, some broker-dealers may face conflicts of interest that misalign their interests with their customers' interest in receiving better execution quality. These conflicts of interest could result, for example, from broker-dealer affiliations with market centers. Some broker-dealers operate or are otherwise affiliated with ATSs, which implies a possible conflict of interest relative to their customers' best interests in that these broker-dealers may give preference to routing orders to their own ATSs, where they typically pay lower transaction fees, even if their customer would have received better execution quality if the order were routed to another trading venue. At least one academic study has shown that broker-dealers that route orders to their ATSs obtain worse execution quality.[760] Similarly, presence of liquidity fees and rebates on some market centers may incentivize broker-dealers to make routing decisions based on where they can receive the highest rebate (or pay the lowest fee), rather than where they can receive better execution quality on behalf of their customer.[761] For example, a recent research paper analyzed the relation between maker-taker fee schedules and order routing, and found a negative relation between take fees and limit order execution quality.[762] Another potential conflict of interest, particularly with regard to individual investor order flow, includes the receipt of PFOF, which may result in broker-dealers routing orders to wholesalers as a result of the terms of the PFOF arrangements.[763]

If information asymmetries, such as those resulting from insufficient public information about broker-dealer execution quality,[764] prevent investors from observing differences in execution quality across broker-dealers, this would limit the extent to which broker-dealers would need to keep these conflicts of interest in check and compete on the basis of execution quality.

(b) Trading Services for NMS Stocks

(1) Current Structure of the Market for Trading Services

Trading services for NMS stocks are highly fragmented among different types of market centers.[765] Table 7 shows that in Q1 of 2022, NMS stocks were traded on 16 national securities exchanges and off-exchange at 32 NMS Stock ATSs and at over 230 other FINRA members, including 6 wholesalers that internalize the majority of individual investor marketable orders.[766] National securities exchanges execute approximately 60% of total share volume in NMS stocks, while off-exchange market centers execute approximately 40% of total share volume.[767] The majority of off-exchange volume is executed by wholesalers, who execute almost one quarter of total share volume (23.9%) and about 60% of off-exchange volume. Some OTC market makers, such as wholesalers, operate SDPs through which they execute institutional orders in NMS stocks against their own inventory.[768] SDPs accounted for approximately 4% of total trading volume in Q1 2022.[769] As of June 2022, the Commission estimates that there are currently 236 market centers to which Rule 605 applies.[770]

[753] *See* Tyler Beason & Sunil Wahal, *The Anatomy of Trading Algorithms,* (working paper Jan. 21, 2021), *available at https://ssrn.com/abstract=3497001* (retrieved from SSRN Elsevier database).

[754] Note that some child orders may be held orders and thus would be required to be included in Rule 605 reports.

[755] *See supra* note 60 and accompanying text discussing broker-dealers requirements under Rule 606(b)(3) to provide individualized reports of execution quality upon request for not held orders.

[756] For example, broker-dealers may compete by charging lower commissions for trading, or by offering a wider range of services or functionalities, such as trading in additional asset classes such as options.

[757] *See supra* note 554.

[758] *See supra* note 506 for examples.

[759] *See supra* section VII.C.2.(a)(1).

[760] *See* Amber Anand, Mehrdad Samadi, Jonathan Sokobin & Kumar Venkataraman, *Institutional Order Handling and Broker-Affiliated Trading Venues,* 34 Rev. Fin. Studies 3364 (2021).

[761] *See, e.g.,* Robert H. Battalio, Shane A. Corwin, & Robert H. Jennings, *Can Brokers Have It All? On the Relation Between Make-Take Fees and Limit Order Execution Quality,* 71 J. Fin. 2193 (2016).

[762] *See id.* The authors ''document a strong negative relation between take fees and several measures of limit order execution quality. Based on this evidence, [they] conclude that the decision of some national brokerages to route all nonmarketable limit orders to a single exchange paying the highest rebate is not consistent with the broker's responsibility to obtain best execution for customers.''

[763] The study by Schwarz et al. (2022) in *supra* note 529 does not find a relationship between the amount of PFOF a retail broker receives and the amount of price improvement their customers' orders receive. However, the authors noted that the variation in the magnitude of price improvement they saw across retail brokers was significantly greater than the amount of PFOF the retail broker received, which could indicate their sample was not large enough to observe a statistically significant effect.

[764] *See supra* section VII.C.2.(a)(1) discussing broker-dealers' current execution quality reporting requirements.

[765] Some academic studies attribute the highly fragmented nature of this market to implementation of Regulation NMS. *See, e.g.,* Maureen O'Hara & Mao Ye, *Is Market Fragmentation Harming Market Quality?,* 100 J. Fin. Econ. 459 (2011); Amy Kwan, Ronald Masulis & Thomas H. MacInish, *Trading Rules, Competition for Order Flow and Market Fragmentation,* 115 J. Fin. Econ. 330 (2015).

[766] *See* Concept Release on Equity Market Structure, 75 FR 3594, 3598–3560 (Jan. 21, 2010) (for a discussion of the types of trading centers); *see also* Form ATS–N Filings and Information, *available at https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm.* These wholesalers were determined based on marketable order routing information from retail broker Rule 606(a)(1) reports.

[767] This analysis uses data from prior to the implementation of the MDI Rules. The implementation of the MDI Rules may result in a change in the flow of orders across trading venues, which may result in numbers that are different from those reported here. However, the Commission is uncertain of the magnitude of these effects. *See supra* section VII.C.1.(d)(2) for further discussion.

[768] *See* Rosenblatt Securities (2022), US Equity Trading Venue Guide. Wholesalers and OTC market makers can execute orders themselves or route orders to be executed on other venues. An SDP always acts as the counterparty to any trade that occurs on the SDP. *See, e.g., Where Do Stocks Trade?,* FINRA (Dec. 3, 2021), *available at https://www.finra.org/investors/insights/where-do-stocks-trade.*

[769] *See* Rosenblatt Securities (2022), US Equity Trading Venue Guide.

[770] *See supra* section VI.C for a discussion of this estimate. Some market centers may not be required to prepare Rule 605 reports, for example, if they do not handle any covered orders.

TABLE 7—NMS STOCK TRADED SHARE VOLUME PERCENTAGE BY MARKET CENTER TYPE

Market center type	Venue count	Share volume (% of total volume)	Off-exchange share volume (% of total off-exchange)
NMS Stock ATSs	32	10.2	25.2
National Securities Exchanges	16	59.7	.....
Wholesalers	6	23.9	59.4
Other FINRA Members	232	6.3	15.6

Table 7: NMS Stock Traded Share Volume Percentage by Market Center Type. This table reports the percentage of all NMS stock executed share volume and the percentage of NMS stock share volume executed off-exchange for different types of market centers for Q1 2022, including lists the number of venues in each market center category. Exchange share volume and total market volume are based on CBOE Market Volume Data on monthly share volume executed on each exchange *available at: https://cboe.com/us/equities/market_statistics/historical_market_volume/.* NMS Stock ATS, wholesaler and FINRA member share volume are based on monthly data from FINRA OTC (Non-ATS) Transparency Data Monthly Statistics, *available at: https://otctransparency.finra.org/otctransparency/OtcData;* and FINRA ATS Transparency Data Monthly Statistics, *available at: https://otctransparency.finra.org/otctransparency/AtsBlocksDownload.* This analysis uses data from prior to the implementation of the MDI Rules and specific numbers reported may be different following the implementation of the MDI Rules. *See supra* note 767 and section VII.C.1.(d)(2).

These market centers, among other things, match traders with counterparties, provide a framework for price negotiation and provide liquidity to those seeking to trade, to supply investors with execution services at efficient prices. Market centers' primary customers are the broker-dealers that route their own orders or their customers' orders for execution at the trading center, and market centers compete with each other for these customers on a number of dimensions, including execution quality.

Broker-dealers may face switching costs from changing the primary trading venues to which they route orders. For example, the extent to which broker-dealers may have long-term contractual arrangements to route orders to specific market centers would hamper their ability to switch trading venue. The common practice across national securities exchanges of setting fee and rebate schedules where specific tiers are determined by execution volume [771] may also make it difficult of broker-dealers to transfer order flow between market centers. Volume-based tiering gives broker-dealers an incentive to concentrate orders on a given exchange, not because that exchange may offer the best execution quality but because doing so can allow a broker-dealer to execute sufficient volume on the exchange to qualify for a better tier and receive a lower fee or higher rebate. In addition, for national securities exchanges, upfront connectivity fees associated with establishing a connection to a new exchange could also discourage switching.

While national securities exchanges cater to a broader spectrum of investors, ATSs and OTC market makers, including wholesalers, tend to focus more on providing trading services for either institutional or individual investor order flow. For example, an analysis of retail brokers' routing practices showed that a group of six wholesalers handled more than 87% of the customer orders of retail brokers in Q1 2022.[772] Meanwhile, SDPs are mainly used for institutional orders, to avoid exposure to potentially more informed order flow on other trading venues.[773]

(2) Competition Between Trading Venues on the Basis of Execution Quality

Trading venues compete with one another on the basis of the execution quality that they offer, as well as on the basis of other potential factors.[774] As discussed above, Rule 605 reports are currently a useful proxy that investors and their broker-dealers can use to assess and compare the execution quality that they can expect to receive across market centers,[775] and there is evidence that broker-dealers factor in information about the execution quality of market centers from Rule 605 reports when making their order routing decisions. One academic study attributes a significant decline in effective and quoted spreads following the implementation of Rule 605 to an increase in competition between market centers, who improved the execution quality that they offered in order to attract more order flow.[776] Market centers may seek to improve their competitive position on the basis of execution quality by, for example, investing in the speed and quality of their execution technology.

Market centers have less of an incentive to compete and innovate on execution quality to the extent that broker-dealers route orders for reasons other than execution quality. As discussed above, if information asymmetries, such as those resulting from insufficient public information about broker-dealer execution quality, prevent investors from observing differences in execution quality across broker-dealers, this would limit the extent to which broker-dealers would need to compete on the basis of execution quality.[777] Market centers also have less of an incentive to compete on the basis of execution quality to the extent that broker-dealers and other market participants are less able to use Rule 605 reports to compare execution quality across market centers, for example, as a result of erosions to the information content of Rule 605 statistics due to changes in market conditions,[778] or to the extent that Rule

[771] Some national securities exchanges typically currently use volume calculated on a monthly basis to determine the applicable threshold or tier rate. *See, e.g.,* fee schedules of NASDAQ PSX, *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,* EDGA Equities Fee Schedules, *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).

[772] *See supra* note 614 for more details about this analysis.

[773] *See, e.g.,* Yashar H. Barardehi, et al., *Internalized Retail Order Imbalances and Institutional Liquidity Demand* (working paper revised May 23, 2022), *available at https://ssrn.com/abstract=3966059* (retrieved from SSRN Elsevier database).

[774] For example, national securities exchanges may adjust fees and rebates to incentivize broker-dealers to route more order flow to them. The use of liquidity rebates have also allowed national securities exchanges to compete with off-exchange market centers for order flow by making it more expensive to offer price improvement over the displayed NBBO. *See* Transaction Fee Pilot for NMS Stocks, 84 FR 5202 (Feb. 20, 2019) at 5255.

[775] *See supra* section VII.C.1.(a).

[776] *See* Zhao & Chung.

[777] *See supra* section VII.C.3.(a)(2).

[778] For example, market centers may be less incentivized to compete on the basis of execution

Continued

605 does not include some relevant order sizes or types.[779]

D. Economic Effects

The proposed amendments modifying the reporting requirements under Rule 605 may result in numerous beneficial economic effects. These economic effects would mainly derive from improvements in the transparency of execution quality of broker-dealers and market centers, which would promote competition among these reporting entities on the basis on execution quality. However, the proposed amendments to Rule 605 may also result in initial and ongoing compliance costs to reporting entities.

As discussed above, this section measures the economic effects of the proposed amendments relative to a regulatory baseline that includes the implementation of the MDI Rules.[780] Furthermore, this section reflects the Commission's assessment of the anticipated economic effects, including potentially countervailing or confounding economic effects from the MDI Rules.[781] However, given that the MDI Rules have not yet been implemented, they have not affected market practice and therefore data that would be required for a comprehensive quantitative analysis of the economic effects that includes the effects of the MDI Rules is not available. It is possible that the economic effects relative to the baseline could be different once the MDI Rules are implemented. Where implementation of the above-described MDI Rules may affect certain numbers, the description of the economic effects below notes those effects.

1. Benefits

The Commission believes that the proposed amendments would promote increased transparency of order execution quality as a result of the expansion and modernization of Rule 605 disclosure requirements, as well as a requirement for reporting entities to prepare summary reports, which would improve market participants' ability to use Rule 605 reports and the information contained therein to compare execution quality across reporting entities. This in turn would lead to increased competition between reporting entities on the basis of execution quality, leading to improvements in the execution quality received by investors as competition between reporting entities would be create incentives to offer better execution quality in order to attract and retain customers and order flow.

(a) Increase in Transparency and Access to Information About Execution Quality

The Commission believes that the proposed amendments would promote increased transparency of order execution quality, particularly for larger broker-dealers who were not previously required to disclose execution quality information under Rule 605, but also for all reporting entities, whose execution quality information would be more relevant and easier to access as a result of improvements to existing Rule 605 disclosure requirements.

(1) Expanding the Scope of Reporting Entities

(a) Expanding Requirements for Larger Broker-Dealers

The proposed amendment expanding the scope of Rule 605 reporting entities to include larger broker-dealers[782] would increase transparency into the differences in execution quality achieved by these broker-dealers when they route customer orders to execution venues.[783] Broker-dealers that route customer orders have many choices about where to route customer orders for execution,[784] and their routing decisions affect the execution quality that their customers' orders receive.[785] To ensure that they are directing their orders to the broker-dealer(s) that are able to achieve better execution quality, investors, along with other market participants, have a vested interest in their ability to accurately assess the execution quality that their broker-dealers are able to achieve. However, in the current regulatory environment, the ability of some customers to assess the execution quality that their broker-dealers are providing for their held orders may be limited.[786]

As a result of the proposed amendments, customers of these broker dealers, along with other market participants, would no longer need to make inferences about these broker-dealers' execution quality based on broker-dealer routing information from Rule 606 data combined with market centers' execution quality information from Rule 605 data, but would have access to direct information about the aggregate execution quality achieved by these broker-dealers.[787] Customers could then use this information to compare across broker-dealers and select those broker-dealers offering better execution quality. Furthermore, combined with information about broker-dealers' payment relationships with execution venues in quarterly reports prepared pursuant to Rule 606(a)(1), information about the aggregate execution quality obtained by larger broker-dealers that are in the business of routing customer orders would give market participants and other interested parties access to key information that would facilitate their ability to evaluate how these payment relationships may affect execution quality.

Under the proposed amendments, larger broker-dealers would be required to categorize the execution quality information required by Rule 605 using the same categories that market centers would be required to use, including by individual security, different types of orders, and different order sizes. As with market centers, a particular broker-dealer's order flow may be made up of a different mixture of securities, order types, and order sizes, which may impact or constrain that broker-dealer's

speed to the extent that, as a result of rapid increases in the speed of trading, market participants are less able to use time-to-execution measures from Rule 605 reports to compare across market centers. *See supra* section VII.C.2.(c)(4) for further discussion.

[779] For example, market centers may be less likely to compete on the basis of execution quality for orders of less than 100 shares, since these orders are not required to be included in Rule 605 reports. *See supra* section VII.C.2.(b)(1)(*b*) for further discussion.

[780] *See supra* section VII.C.1.(d).

[781] *See supra* section VII.C.1.(d)(2) for a discussion of the Commission's anticipated economic effects of the MDI Rules as stated in the MDI Adopting Release.

[782] *See supra* section III.A for further discussion of the proposed amendments related to the expansion of Rule 605 reporting entities to include larger broker-dealers.

[783] The EMSAC and commenters generally supported expanding the Rule's scope beyond market centers, including to broker-dealers. *See supra* notes 103–119 and accompanying text. The Commission believes that these effects would principally accrue to larger broker-dealers, who would be required to prepare Rule 605 reports, but may spill over to effect smaller broker-dealers as well. *See* discussion in *infra* section VII.D.1.(d)(1).

[784] *See supra* section VII.C.3.(b)(1), discussing fragmentation in the market for trading services for NMS stocks.

[785] *See, e.g., supra* note 529 and accompanying text, describing a recent academic working paper finding significant variations in execution quality across broker-dealers.

[786] *See supra* section VII.C.2.(a)(1) for a discussion of limitations to investors' abilities to use Rule 606 and Rule 605 reports to estimate the execution quality achieved by broker-dealers. Note that institutional investors may have access to alternative sources of information about execution quality. *See supra* section VII.C.1.(c)(2) for a discussion.

[787] This effect would be enhanced by the requirement that broker-dealers publish Rule 605 reports for their broker-dealer activities separately from activities related to the market center(s) that they may operate, which would allow investors to access execution quality information that is exclusively related to the firm's broker-dealer operations. *See supra* note 182 and accompanying text.

overall execution quality level.[788] For example, Figure 14, which uses a week of CAT data [789] to break down broker-dealer order flow into different order types, shows that broker-dealers indeed handle a variety of order types, including both marketable and non-marketable orders, for both their individual and institutional investor customers. Giving market participants access to this information in Rule 605 reports would ensure that they are able to control for these differences in order flow characteristics when assessing and comparing execution quality information across broker-dealers.

Figure 14: Broker-Dealer Order Volume by Order Type, January 3–7, 2022

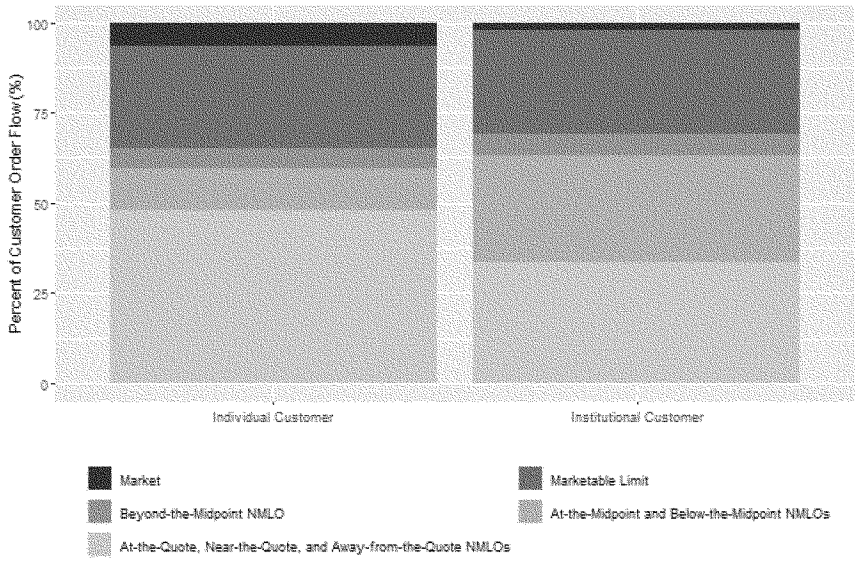

Figure 14: Broker-Dealer Order Volume by Order Type, January 3-7, 2022. This figure shows the distribution of customer order flow, in terms of the percentage of the total number of submitted orders, across different order types for both individual investor and institutional investor customers, using a sample of CAT data for NMS stocks for the period of January 3 to January 7, 2022. See supra note 609 for dataset description.

The proposed amendment for larger broker-dealers to report both the number of shares executed at the receiving broker-dealer and the number of shares executed at any other venue [790] would ensure that Rule 605 reports capture the execution quality of all orders that larger broker-dealers receive for execution as part of their customer-facing broker-dealer function. The majority of executions resulting from a firm's broker-dealer operations would likely be categorized as away-executed shares in the Rule 605 reports associated with its broker-dealer operations.[791] While these shares would not be categorized as being directly executed by the broker-dealer, it is likely that market participants understand that execution quality can depend significantly on the broker-dealers' order handling and routing practices.

The proposed amendments would also require larger broker-dealers to report the same execution quality information as market centers, including information about execution prices, execution speeds, and fill rates,[792] as well as, as a result of the proposed amendments, information about size improvement.[793] The Commission acknowledges that there are certain ways in which broker-dealers may systematically differ from market centers in terms of their execution quality statistics; for example, due to their need to reroute orders that they receive for execution, broker-dealers are likely to have a longer execution time as measured from the time of order receipt, as compared to market centers who can execute orders immediately without the need to reroute. However, these differences are generally well-known to market participants, who would be able to account for these differences in assessing execution quality. Furthermore, it is unlikely that market participants would use information in Rule 605 reports to compare broker-dealers to market centers, as information about the execution quality of these two types of reporting entities is useful to different market participants for fundamentally different purposes. In terms of the principal-agent problems described in the Market Failure section,[794] information about execution quality for broker-dealers solves a different principal-agent problem than information about execution quality for market centers. Broker-dealers' Rule 605 reports would be more likely to be used by broker-dealers' customers to compare execution quality across broker-dealers to alleviate the principal-agent problem that exists between broker-dealers and their customers. In contrast, market

[788] *See supra* note 513 for an example of how differences in order flow characteristics may impact inferences about execution quality.

[789] *See supra* note 609 for dataset description.

[790] *See* 17 CFR 242.605(a)(1)(i)(D) and (E). As discussed herein, the Commission is proposing to modify Rule 605(a)(1)(i)(D) to also cover the number of shares executed at the receiving broker or dealer. *See supra* note 155 and accompanying text.

[791] To the extent that a broker-dealer also acts as a market center, any executions that it handles would be required to be published in the Rule 605 report(s) that it files in its capacity as a market center.

[792] *See supra* section VII.C.1.(a) for a discussion of the economic significance of the execution quality information currently required by Rule 605 to be disclosed by market centers.

[793] *See* proposed Rule 605(a)(1)(i)(F) and discussion in *supra* section IV.B.4.(e).

[794] *See supra* section VII.B.

centers' Rule 605 reports would continue to be more useful for broker-dealers to compare execution quality across market centers to alleviate the principal-agent problem that exists between broker-dealers and the market centers to which they route their customers' orders.

The Commission is mindful that Rule 605's execution quality reports contain a large volume of statistical data, and as a result it may be difficult for individual investors to review and digest the reports. By requiring larger brokers-dealers to report stock-by-stock order execution information in a uniform manner, the current proposal would make it possible for market participants and other interested parties to make their own determinations about how to group stocks or orders when comparing execution quality across broker-dealers. Requiring larger broker-dealers to produce more detailed execution quality data would also help ameliorate potential concerns about overly general statistics, or about the specific categorization of orders and selection of metrics in the summary reports, by allowing market participants and other interested parties to conduct their own analysis based on alternative categorizations of the underlying data. Should certain market participants not have the means to directly analyze the detailed statistics,[795] independent analysts, consultants, broker-dealers, the financial press, and market centers likely will continue to respond to the needs of investors by analyzing the disclosures and producing more digestible information using the data to the extent that they currently do so.[796] Furthermore, requiring all market centers and larger broker-dealers to prepare summary reports with aggregated execution quality information[797] as well as Rule 605 reports would strike a balance between ensuring that market participants have access to detailed execution quality information, and providing an overview of execution quality information that may be more accessible for some market participants.[798]

(b) Specifying and Expanding Requirements for Market Centers

In addition to the proposed amendment expanding the scope of Rule 605 reporting entities to include larger broker-dealers, the Commission believes that additional proposed modifications to the scope of reporting entities would also promote increased transparency.

A proposed amendment specifies that broker-dealers that operate ATSs must prepare Rule 605 reports for their ATSs that are separate from the reports for their other trading activities.[799] Another proposed amendment requires that market centers operating SDPs post separate reports for each entity.[800] These amendments would address directly what Rule 605 requires with respect to reporting by firms that operate multiple market centers, thus increasing the transparency of each reporting entity's execution quality and limiting the co-mingling of information about multiple types of reporting entities into a single report, which, to the extent that it occurs, may currently add noise to or skew Rule 605 reports. For example, requiring market centers that operate SDPs to report statistics separately for each line of business would increase the transparency of the operating market centers' fill rates by eliminating the downwards skew from including ''pinging'' orders submitted to the SDP into their Rule 605 reports.[801] Market participants would be better informed about the execution quality of each reporting entity, which would facilitate comparisons across reporting entities.

If the Order Competition Rule Proposal is adopted,[802] the proposed amendment requiring separate Rule 605 reports for qualified auctions[803] would also promote increased transparency. First, it would allow for easier comparisons of how execution quality varies across qualified auctions. Second, it would limit the extent to which co-mingling qualified auction statistics with other orders executed on a market center add noise to or skew that market center's Rule 605 report. For example, orders submitted to a qualified auction may be more likely to receive price improvement, and may have systematically different fill rates and time-to-executions, as compared to similar orders executed in other trading mechanisms.[804]

The proposed amendment expanding the order size categories required by Rule 605 to include information about fractional shares[805] would also expand the scope of reporting entities to include an estimated 20 additional market centers[806] that currently exclusively execute fractional shares and that were previously not required to file Rule 605 reports due to fractional shares falling below the smallest order size category in the current Rule 605. This would increase transparency about the execution quality achieved by these market centers.

(2) Modifications to Rule 605 Disclosure Requirements

The Commission believes that, as a result of the proposed amendments expanding and modernizing Rule 605 disclosure requirements, the metrics contained in Rule 605 would be more informative about execution quality, which would increase transparency into the differences in execution quality achieved by reporting entities. These improvements in transparency would stem from modifications aimed at clarifying and expanding the scope of Rule 605 reporting entities, modernizing the information required to be reported under Rule 605, and improving the accessibility of the information contained in Rule 605 reports.

(a) Expanding the Definition of Covered Orders

The proposed amendments expanding the definition of covered orders to include additional order types would increase transparency about the execution quality that reporting entities achieve for these additional order types, including orders submitted outside of regular trading hours, orders submitted with stop prices, and non-exempt short sale orders.[807]

[795] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75419 (stating that most individual investors likely would not obtain and digest the reports themselves). *See also supra* note 112 and accompanying text (EMSAC committee member stating that retail investors will not look at the Rule 605 reports); Angel Letter at 3 (commenter stating that Rule 605 data is too raw for most investors to interpret); and *See* Consumer Federation II at 10 (commenter stating that most retail investors may not use the disclosures directly).

[796] *See, e.g., supra* notes 545–547, describing the use of Rule 605 data in academic literature, in comment letters related to Commission and SRO rulemaking, and the financial press.

[797] *See* proposed Rule 605(a)(2).

[798] Several EMSAC committee members argued in favor of requiring broker-dealers to file Rule 605 reports rather than only summary reports. *See supra* notes 112–114 and accompanying text.

[799] *See* proposed Rule 605(a)(1). *See also supra* note 214 and accompanying text. *See supra* note 212 and accompanying text for discussion of suggestions from the EMSAC and commenters related to reporting requirements for ATSs.

[800] *See* proposed Rule 605(a)(1). *See also supra* note 219 and accompanying text.

[801] *See supra* section VII.C.2.(a)(2) for a discussion of why the co-mingling of wholesaler and SDP orders for the purposes of Rule 605 reporting will effect a downwards skew on the fill rates derived from the wholesalers' Rule 605 reports.

[802] *See* Order Competition Rule Proposal.

[803] *See* proposed Rule 605(a)(1). *See also supra* note 203 and accompanying text.

[804] *See supra* section III.B for further discussion.

[805] *See* proposed Rule 600(b)(19).

[806] *See supra* note 486 for further discussion of this estimate.

[807] Commenters have suggested various ways to expand or modify the definition of covered order, including broadening its scope to capture

First, the proposed amendment expanding the definition of ''covered orders'' to include NMLOs submitted outside of regular trading hours that become executable during regular trading hours [808] would lead to a more complete picture of reporting entities' execution characteristics.[809] While an analysis using CAT data shows that pre-open/post-close orders that are executable during regular hours are likely only a small portion of total order flow, these orders have a higher concentration of individual investor shares (29.5%) than the sample time window during regular trading hours (1.9%).[810] Therefore, including information about the execution quality of these orders would be very relevant for individual investors, who would be able to make more informed decisions when choosing a broker-dealer if these orders are included in broker-dealers' execution quality disclosures. Likewise, broker-dealers would be able to make more informed decisions about where to route NMLOs submitted outside of regular trading hours, knowing that these orders are being factored into a market center's overall statistics.

Second, the proposed amendment removing the exclusion of orders with stop prices from the definition of ''covered orders'' [811] would increase transparency about the execution quality of this type of order.[812] This would be particularly beneficial for this order type, as the handling of stop orders can vary significantly across broker-dealers and across the market centers to which they route.[813] Furthermore, the execution prices of stop orders are highly sensitive to handling and execution practices, as these orders are more likely to execute when the stock price is in decline and any delay in execution will result in a larger loss (or smaller gain) for the investor. This risk is particularly acute for stop orders that use market orders, as the execution price an investor receives for this market order can deviate significantly from the stop price in a fast-moving market where prices change rapidly.[814] As shown in Table 4, stop orders that trigger the submission of market orders are the most common type of stop orders used by individual investors (representing 87.7% of their stop orders), who are more likely than institutional investors to submit stop orders (*i.e.,* 6.44% of individual investors' market orders are submitted with stop prices vs. 0.23% of those of institutional investors). Therefore, information about the execution quality of stop orders would be particularly useful for individual investors, who could use this information to identify and direct stop orders to those broker-dealers with the practices and abilities that allow them to achieve higher execution quality for these orders. As broker-dealers would be incentivized to improve their handling of stop orders,[815] they would be able to use information about the execution quality of stop orders achieved by market centers to route stop orders to those market centers with the practices and abilities that allow them to achieve higher execution quality for these orders.[816] Furthermore, the proposed amendment to include stop orders as a separate order type category rather than grouping them together with other order types [817] also would prevent them from skewing the execution quality of other orders downwards, given that stop orders are more likely to execute in adverse market conditions.

Lastly, the proposal to clarify that non-exempt short sale orders should be included in Rule 605 statistics [818] would lead to a more complete picture of reporting entities' execution characteristics, as short sales make up a large portion of trades and by implication are likely also a significant component of order flow.[819] An analysis of short volume data found that, between August 2009 and February 2021, short selling was an average of 47.3% of trading volume for non-financial common stocks.[820] To the extent that the proportion of short selling trade volume is comparable to the proportion of short selling order volume, these data points show that short selling is prevalent in equity markets. Therefore, the inclusion of non-exempt short sale orders would result in reporting entities' execution quality statistics reflecting more relevant orders for individual and institutional investors, who both engage in short selling. While the costs to maintain margin accounts and borrow stocks may prevent some individual investors from participating in the short sale market, one academic working paper found that, between January 2010 and December 2016, 6.36% of all off-exchange short selling [821] could be attributed to retail traders, and 10.92% of retail trading was made up of short sales.[822] Meanwhile, evidence suggests

additional order types. *See supra* notes 122–125 and accompanying text.

[808] *See* proposed Rule 600(b)(30). *See also supra* note 230 and accompanying text.

[809] One commenter to the 2018 Rule 2016 Amendments and petitioner for rulemaking recommending inclusion of orders submitted prior to market open in Rule 605 reporting requirements. *See supra* notes 123–125.

[810] *See* analysis described in *supra* Section VII.C.2.(b)(4).

[811] *See* proposed Rule 600(b)(30) (eliminating the express carve out of orders submitted with stop prices from the definition of ''covered order''). *See also supra* note 243 and accompanying text.

[812] A petitioner stated that including stop orders within the Rule's scope would provide a more complete view of the orders certain broker-dealers may use when assessing the execution quality market centers provide. *See supra* note 123 and accompanying text.

[813] *See supra* note 652 and accompanying text for a discussion of differential treatment of stop orders.

[814] *See, e.g., SEC Investor Bulletin: Stop, Stop-Limit, and Trailing Stop Orders,* (July 13, 2017), *available at https://www.sec.gov/oiea/investor-alerts-bulletins/ib_stoporders.html.* This risk can be attenuated with the use of stop limit orders, which sets a minimum price at which the stop order can be executed. However, the limit price may prevent the stop limit order from executing if the stock price falls below the limit price before the stop limit order can execute.

[815] *See infra* section VII.D.1.(b)(1)(*a*) for a discussion of the proposed amendments' impact on competition between broker-dealers on the basis of execution quality for stop orders.

[816] As discussed in *supra* section VII.C.2.(b)(2), the Commission understands that the handling of stop orders can vary significantly across market centers.

[817] *See* proposed Rule 600(b)(20) (defining ''categorized by order type'' to include a category for ''*executable* orders submitted with stop prices'') (emphasis added). *See also* discussion in *supra* section IV.B.2.(a).

[818] *See supra* note 254 and accompanying text.

[819] *See also supra* note 123 and accompanying text (petitioner recommending inclusion of short sales in Rule 605).

[820] Short volume data is provided by CBOE Group (CBOE BYX Exchange, CBOE BZX Exchange, CBOE EDGA Exchange, CBOE EDGX Exchange), FINRA (FNYX,FNSQ, FNQC), NASDAQ Group (Nasdaq BX, Nasdaq PSX and Nasdaq Stock Market), and NYSE Group (New York Stock Exchange, NYSE Arca, NYSE American, NYSE Chicago, and NYSE National). *See https://www.cboe.com/us/equities/market_statistics/short_sale/* (CBOE data); *https://www.finra.org/finra-data/browse-catalog/short-sale-volume-data* (FINRA data); *https://nasdaqtrader.com/Trader.aspx?id=shortsale* (NASDAQ data); *ftp://ftp.nyxdata.com/* (NYSE data). Common stocks include those with a CRSP share code of 10 or 11. Financial stocks (SIC code 6000–6999) and stocks that do not have an active trading status in CRSP (trade status = A) are excluded. Analysis derived based on data from CRSP 1925 US Stock Database, Ctr. Rsch. Sec. Prices, U. Chi. Booth Sch. Bus. (2022). The daily level of short selling is calculated for each stock as the daily number of shares sold short divided by the daily trading volume, averaged across stocks, and finally averaged across all days in the sample (August 3, 2009 to February 5, 2021). Note that this number matches that of other studies. For example, Figure F.1 in the Congressional Study on Short Sale Reporting shows that the level of short selling as a percentage of trading volume grew from 2007 to close to 50% by 2013. *See* Short Sale Position and Transaction Reporting (June 5, 2014), *available at https://www.sec.gov/files/short-sale-position-and-transaction-reporting%2C0.pdf.*

[821] One academic paper found that short selling by individual investors made up a much smaller percentage of overall shorting volume on NYSE (1% to 2%). The authors attribute the low number of on-exchange retail shorting to brokerage routing decisions. *See* Ekkehart Boehmer, Charles M. Jones & Xiaoyan Zhang, *Which Shorts are Informed?,* 63 J. Fin. 491 (2008).

[822] *See* Ekkehart Boehmer & Wanshan Song, *Smart Retail Traders, Short Sellers, and Stock*

Continued

that short selling by institutional investors is largely the purview of hedge funds,[823] which are estimated to make up around 85% of the short selling market.[824] One academic paper finds that short sellers' choice of trading venue is highly dependent on its market design and that, due to their information advantages, short sellers prefer trading venues that offer high execution speeds over those that offer low trading costs.[825] Therefore, including information about the execution quality that reporting entities achieve for short sale orders into Rule 605 disclosures would be relevant for a variety of investors who engage in short selling.

(b) Modernizing the Required Information

(i) Categorization by Order Size

The proposed amendments modernizing the information required by Rule 605 would promote increased transparency by increasing the relevance of the information contained in Rule 605 reports, including information about order size categories.[826]

The proposed amendments expanding Rule 605's order size categories to include information about a wider range of order sizes,[827] including odd-lots, orders less than one share, and larger-sized orders,[828] would increase the extent to which Rule 605 captures information about orders that are relevant to both individual and institutional investors. Analyses showed that the inclusion of orders for less than 100 shares into Rule 605 reporting requirements would include up to an additional 18.2% of NMLOs (2.8% of NMLO share volume),[829] and the inclusion of fractional shares would include up to an additional 10.4% of executions received by individual investors into Rule 605 reports.[830] Fractional shares would benefit from increased transparency. While the Commission lacks information on the execution quality of fractional shares, the execution quality of orders for less than one share may vary across broker-dealers. In particular, many market centers do not offer the functionality to accept or execute such orders, and so their execution quality will depend on how the broker-dealer handles these orders, such as internalizing such orders or aggregating them together for the purpose of rerouting to market centers.[831] Lastly, the inclusion of information about larger-sized orders would include up to an additional 7.8% of NMLO share volume,[832] which would likely mostly be relevant for institutional investors, to the extent that some of these orders may not be split into smaller child orders.[833]

In addition, the proposed amendments to define order size categories in terms of number of round lots[834] would increase the transparency regarding distribution of order sizes that a reporting entity handles, particularly for higher-priced stocks. The new MDI Rules tie the definition of round lot to a stock's average closing price during the previous month, with higher-priced stocks associated with lower-sized rounds lots,[835] to account for the fact that order sizes will tend to be smaller in higher-priced stocks. Continuing the example from section VII.C.2.(c)(1), under the new MDI Rules, a $500 stock would have a round lot size of 40 shares. Therefore, for a $500 stock, instead of all typically-sized orders below $200,000[836] (*i.e.,* 400 shares, or 10 round lots) being clustered in a single order size category, these orders would potentially be spread among four out of six of the proposed order size categories: (i) less than a share; (ii) odd-lot; (iii) 1 round lot to less than 5 round lots; (iv) 5 round lots to less than 20 round lots. This would result in a more meaningful categorization of orders that would better enable market participants to compare execution qualities across orders of different sizes. As a result, market participants would be better able to take into account potential differences in the distribution of order sizes that reporting entities typically handle for a given stock when comparing execution quality metrics across reporting entities, making these metrics more informative for making apples-to-apples comparisons of execution quality across reporting entities.

(ii) Categorization by Order Type

The proposed amendments modifying the order type categories required by Rule 605, including modifications to the coverage of NMLOs, and including separate order type categories for beyond-the-midpoint orders and marketable IOCs, would promote increased transparency by increasing the relevance of the information contained in Rule 605 reports.

First, the proposed amendment to modify Rule 605's coverage of NMLOs so that reporting entities are required to disclosure execution quality information only for those NMLOs that become executable[837] (*i.e.,* eventually touch the NBBO) would facilitate comparisons between market centers, by more accurately excluding NMLOs that do not receive a meaningful opportunity to execute; for example because the price moved away from the order and/or the order was cancelled before its limit price was reached.[838] On the other

Returns. Short Sellers, and Stock Returns (working paper Oct. 23, 2020) *available athttps://papers.ssrn.com/sol3/papers.cfm?abstract_id=3723096* (retrieved from SSRN Elsevier database).

[823] *See* Peter Molk & Frank Partnoy, *Institutional Investors as Short Sellers?,* 99 B.U. L. Rev. 837, 839 (2019). Molk and Partnoy's paper ''identif[ies] the regulatory and other barriers that keep key categories of institutions[, specifically, mutual funds, insurance companies, banks, sovereign wealth funds, endowments, and foundations,] from acquiring significant short positions.'' *Id.* at 843. In addition, a Division of Economic and Risk Analysis White Paper survey of all mutual fund Form N–SAR filings in 2014 found that ''[w]hile 64% of all funds were allowed to engage in short selling, only 5% of all funds actually did so.'' *See* Daniel Deli et al., *Use Of Derivatives By Registered Investment Companies,* SEC 8 (2015), *available at https://www.sec.gov/files/derivatives12-2015.pdf.*

[824] *See* Yawen Jiao, Massimo Massa & Hong Zhang, *Short Selling Meets Hedge Fund 13F: An Anatomy of Informed Demand,* 122 J. Fin. Econ. 544 (2016), citing a 2009 report from Goldman Sachs.

[825] *See* Adam V. Reed, Mehrdad Samadi & Jonathan Sokobin, *Shorting in Broad Daylight: Short Sales and Venue Choice,* 55 J. Fin. Quantitative Analysis 2246 (Nov. 2020).

[826] The EMSAC and commenters have also suggested bringing smaller and larger order sizes within scope. *See supra* notes 126–132 and accompanying text.

[827] Commenters have suggested amending the scope of the Rule to include odd-lot orders (*see supra* note 271 and accompanying text), as well as larger-sized orders (*see supra* notes 283–285 and accompanying text).

[828] *See* proposed Rule 600(b)(20). Furthermore, *see supra* section IV.B.1.(b)(2) for a discussion of the Commission's proposal to rescind the exemptive relief for orders of 10,000 or more shares and include these orders within the scope of Rule 605 reports.

[829] *See* Figure 5 in *supra* section VII.C.2.(b)(1)(*a*). As discussed in this section, odd-lots are submitted by both individual and institutional investors.

[830] *See* analysis in *supra* section VII.C.2.(b)(1)(*b*).

[831] *See supra* note 643 and accompanying text.

[832] *See* analysis in *supra* section VII.C.2.(b)(1)(*c*).

[833] This effect on competition may be limited if most large institutional orders are not held orders and would thus be excluded from Rule 605 reporting requirements, and/or are broken up into smaller child orders that are likely to be smaller and may already be included in Rule 605 reporting requirement. *See supra* note 650 and accompanying text.

[834] *See* proposed Rule 600(b)(19).

[835] *See supra* note 577 and accompanying text describing the new definition of round lots.

[836] This refers to the exclusion of orders greater than $200,000 from some Regulation NMS rules. *See supra* note 674.

[837] *See* proposed Rule 600(b)(42) (defining ''executable'') and proposed Rule 600(b)(20) (defining ''categorized by order type'' to include categories for ''*executable* orders submitted with stop prices'' and ''*executable* non-marketable limit orders'') (emphasis added). *See also supra* notes 240–241 and 303–304.

[838] *See supra* notes 296–297 and accompanying text for discussion of commenters' suggestions regarding Rule 605 reporting requirements for NMLOs.

hand, investors could expect a NMLO with a limit price equal to the prevailing NBBO to have a reasonable chance of executing, even if the limit price is more than $.10 away from the NBB or NBO at the time of order receipt. This would facilitate comparisons between market centers by ensuring that the execution quality statistics for NMLOs more meaningfully capture a market center's performance in handling NMLOs, rather than reflecting market conditions potentially outside of the market center's control, such as movements of the NBBO.

This is evident from an analysis comparing the fill rates of all near-the-quote and away-from-the-quote NMLOs to the fill rates of executable NMLOs, calculated using the sample of MIDAS data.[839] Results are presented in Figure 15.[840] While the fill rates of all near-the-quote and away-from-the-quote NMLOs are very low and similar to one another (0.2% and 0.6%, respectively), the fill rates of executable near-the-quote and away-from-the-quote NMLOs are much higher, and also very different from one another. In fact, at 32.9%, the average fill rate of executable away-from-the-quote NMLOs is relatively high, and actually much higher than the average fill rate of executable near-the-quote orders (5.5%).[841] This reflects that even away-from-the-quote orders are likely to execute if prices move such that they have a meaningful opportunity to execute.

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Figure 15: Fill Rates of Executable Away-From-the-Quote and Near-the-Quote NMLOs, March 2022

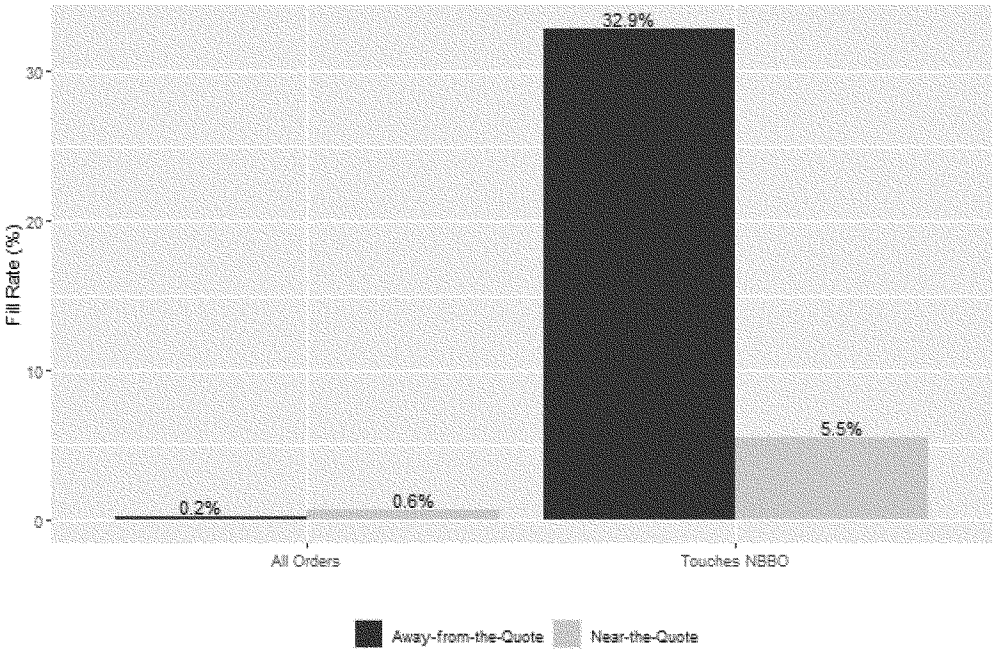

Figure 15: Fill Rates of Executable Away-from-the-Quote and Near-the-Quote NMLOs, March 2022. This figure plots the fill rates of away-from-the-quote and near-the-quote NMLOs, using order submission data from MIDAS. See supra note 634 for a description of the dataset. Fill rates are calculated as the number of shares executed divided by the number of shares submitted. Plotted are the fill rates for all away-from-the-quote and near-the-quote NMLOs, along with only those away-from-the-quote and near-the-quote NMLOs that eventually touch the NBBO (i.e., become executable). This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. See supra note 685 and section VII.C.1.d).

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Second, the proposed amendment to include a separate order type category for beyond-the-midpoint limit orders[842] would increase transparency on how reporting entities handle these types of orders (*e.g.,* whether or not they offer these orders price improvement) and reduce the extent to which including information about these orders along with other types of NMLOs may skew the execution quality statistics of other types of NMLOs. The Commission understands that different reporting entities may treat beyond-the-midpoint

[839] *See supra* note 634 for a description of the dataset. Staff found that, first, only a small percentage of NMLOs eventually touch the NBBO: only 15.01% of near-the-quote NMLOs and 2.08% of away-from-the-quote NMLOs were executable during their lifespan.

[840] This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. However, it is not clear how a change in the distribution of orders into various NMLO categories would affect the average fill rates of these NMLO categories. *See supra* note 685 and section VII.C.1.(d)(2). Also, note that, by definition, all at-the-quote and inside-the-quote NMLOs are executable by definition of having a limit price equal to or better than the NBBO, and so the fill rates of executable at-the-quote and inside-the-quote NMLOs would be identical to those for all at-the-quote and inside-the-quote NMLOs presented in Figure 8.

[841] This is likely because many near-the-quote NMLOs are cancelled before their limit prices are reached. In fact, examining the distribution of cancellations of these orders reveals that 27.5% of near-the-quote NMLO shares are cancelled within 100 milliseconds, vs. only 13.5% of away-from-the-quote NMLOs.

[842] *See* proposed Rule 600(b)(20) (defining ''categorized by order type'' to include a category for ''beyond-the-midpoint limit orders''). *See also supra* note 312 and accompanying text.

NMLOs differently from other types of NMLOs, and that as a result beyond-the-midpoint NMLOs have systematically different execution quality characteristics than other types of NMLOs, and even other types of inside-the-quote NMLOs. For example, beyond-the-midpoint limit orders may be offered price improvement at some market centers, such as wholesalers, so the execution quality of these orders would be highly dependent on to which type of market center the broker-dealer routes such orders.[843] Requiring reporting entities to report execution quality statistics separately for beyond-the-midpoint orders would reveal differences in reporting entities' handling of this type of order.

Lastly, the proposed amendment assigning marketable IOCs to a separate order type category so that they no longer would be commingled with other order types[844] would increase the transparency of execution quality information, both for IOCs and for other types of marketable orders.[845] Assigning marketable IOCs to a separate order type category would increase transparency about the execution quality that reporting entities achieve for these types of orders. Supporting the idea that IOCs tend to have different execution quality profiles than other types of marketable orders, an analysis showed that IOCs on average have much lower fill rates (3.22%) than other market and marketable limit orders (15.94%), and that fill rates vary across market centers and according to order characteristics such as size.[846] Information about the execution quality of IOCs would allow broker-dealers handling these types of orders to be able to better assess which market center on average offers better execution quality to these types of orders. These broker-dealers could thus make more informed decisions about where to route these orders. Furthermore, due to their different execution profiles, removing IOCs from other marketable order categories would cause the execution quality metrics for other types of marketable orders to more accurately reflect reporting entities' handling of other types of market orders.[847] The effect on the execution quality metrics of other types of marketable orders would likely be significant, as an analysis of IOCs found that they make up more than 90% of market and marketable share volume.[848]

(iii) Timestamp Conventions

Several of the proposed amendments would promote increased transparency by modifying the conventions used to calculate time-to-execution information for the purposes of Rule 605 reporting, including increasing the granularity of the timestamp, replacing the current time-to-execution buckets in Rule 605 with statistics capturing information about the distribution of time-to-execution, and modifying the conventions for recording the time-to-execution of NMLOs.[849]

First, the proposed amendment increasing the granularity of the timestamp conventions used for the time of order receipt and time of order execution from seconds to milliseconds[850] would make the current time-to-execution statistics in Rule 605, including the average share-weighted time-to-execution of shares executed with positive price improvement, without price improvement and also with negative price improvement, more informative about the execution speeds offered by a market center. Given the data and trading speeds enabled by modern technology in which execution speeds measured in seconds are likely to miss much of the variation in time-to-executions across reporting entities in today's markets, particularly for market and marketable orders,[851] adding granularity to the timestamps used to calculate the time-to-execution speed measures included in Rule 605 reports would benefit market participants in their efforts to compare time-to-executions across reporting entities.

Second, the proposal to eliminate the current time-to-execution buckets[852] would eliminate a method for presenting information about time-to-executions that has lost relevance over time, as, for reasons described above, these categories are not granular enough with respect to variations in time-to-executions across reporting entities. Instead, the Commission proposes requiring, in addition to average time to execution statistics as currently included in Rule 605,[853] both share-weighted median and 99th percentile time-to-execution statistics in order to provide information about the distribution of execution speeds achieved by a reporting entity.[854] Given that outliers could skew the share-weighted average time to execution, information about the distribution of execution speeds in addition to the average would still be useful. However, time-to-execution buckets are of limited utility, especially since time-to-execution buckets that are appropriate for some order types, such as NMLOs, may not be granular enough for other order types, such as market and marketable orders.[855] Statistics capturing the distribution of time-to-executions would represent a more flexible and useful method for capturing information about the time-to-executions of a variety of order types.

Finally, the proposed amendments would measure time-to-execution for NMLOs from the time that the order becomes executable, rather than from the time of order receipt.[856] This would ensure that this metric would be more likely to capture the portions of execution speed that are within a

[843] *See* Table 5 in *supra* section VII.C.5.(c), showing that beyond-the-midpoint orders handled by wholesalers tend to have higher fill rates, faster execution time, and higher price improvement relative to other types of NMLOs.

[844] *See* proposed Rule 600(b)(20) (defining ''categorized by order type'' to include a category for ''marketable immediate-or-cancel orders''). *See also* discussion in *supra* section IV.B.2.(c).

[845] The EMSAC, as well as commenters on the 2010 Equity Market Structure Concept Release and the 2018 Rule 606 Amendments, suggested separating IOCs within the categorization by order type. *See supra* note 324 and accompanying text.

[846] For example, market centers other than wholesalers tend to have higher fill rates for IOC odd-lots (39.6%) than non-IOC odd-lots (15.4%), the opposite is true for wholesalers (30.1% vs. 67.1%). *See* Table 6 in *supra* section VII.C.5.(g).

[847] *See supra* note 725 and accompanying text for an example of how co-mingling IOCs with other order types could lower marker centers' incentives to improve execution quality for other marketable orders.

[848] *See* Table 6 in *supra* section VII.C.5.(g) and corresponding discussion.

[849] *See supra* notes 339–340, 358 and accompanying text discussing suggestions from commenters related to the current provisions in Rule 605 for timestamps.

[850] *See* proposed Rule 600(b)(108) and (109). *See also supra* notes 333–334 and accompanying text.

[851] *See supra* section VII.C.2.(c)(4) for a discussion of how the granularity of the time-to-execution categories currently defined in Rule 605 has lost relevance over time.

[852] *See* 17 CFR 242.605(a)(1)(i)(F), (G), (H), (I) and (J) (detailing time-to-execution buckets of 0–9 seconds, 10 to 29 seconds, 30 to 59 seconds, 60 to 299 seconds and 5 to 30 minutes after the time of order receipt).

[853] *See* 17 CFR 242.605(a)(1)(ii)(D), (F), and (I), requiring share-weighted average period from the time of order receipt to the time of order execution for shares executed with price improvement, at the quote, and outside the quote, respectively.

[854] *See* proposed Rule 605(a)(1)(ii)(D), (E), (H), (I), (M), and (N), and proposed Rule 605(a)(1)(iii)(D) and (E), requiring share-weighted median and share-weighted 99th percentile time to execution information. *See also supra* note 349 and accompanying text.

[855] *See* Figure 12 and corresponding discussion in section VII.C.2.(c)(4), *supra,* describing an analysis showing that, for at-the-quote and near-the-quote limit orders, executions are reasonably well distributed across the different time-to-execution buckets but, for market and marketable limit orders, time-to-executions are mostly bunched up at the faster end of their time buckets.

[856] *See* proposed Rule 605(a)(1)(iii)(C), (D), and (E).

reporting entity's control, rather than dependent on market conditions.[857]

(iv) Modifications to Information Required for All Types of Orders

The proposed amendments modernizing the information required for all order types would promote increased transparency by increasing the relevance of the information contained in Rule 605 reports. This holds as well for the proposed amendments modifying the calculations of average realized spreads, expanding existing requirements to report average effective spreads, adding additional metrics such as percentage realized and effective spreads, effective over quoted spreads, and size improvement, and modifying the categorization of riskless principal trades.

First, the proposed amendment to modify the time horizon used to calculate the realized spread from a single horizon of five minutes to two horizons of 15 seconds and 1 minute[858] would increase the relevance of this measure and allow it to more accurately reflect the speed of modern markets.[859] This would allow market participants to better compare execution quality across market centers. Realized spreads are meant to capture information about the adverse selection risk associated with providing liquidity,[860] and in this way are a useful measure for evaluating reporting entities' order handling practices during times of market stress or high adverse selection. However, the current requirement to use a five-minute time horizon to calculate realized spreads for the purposes of Rule 605 disclosures is too long of a horizon to reflect the speed of modern markets, and likely results in noisy measures of the realized spread.[861] Instead, the proposed time horizons of 15 seconds and 1 minute are more appropriate time horizons given current trading speeds. Analysis found that the proposed time horizons of 15 seconds and 1 minute capture most of the information about realized spreads, in particular for the largest stocks.[862] This supports results from the academic literature, as one paper similarly posits that the five-minute time horizon should be replaced with a horizon of no more than 15 seconds for large stocks and 60 seconds for small stocks.[863]

Second, the proposed amendment to require market centers to include information about average effective spreads for NMLOs and orders submitted with stop prices,[864] in addition to market and marketable limit orders, would increase transparency about the availability of favorable executions for these types of orders. For NMLOs, the average effective spread captures how much customers can expect to be compensated for providing liquidity.[865] If a market center is offering lower (or, more precisely, more negative) effective spreads for NMLOs on average, that means that the market center is able to execute NMLOs even when the NBBO spread is wide, *e.g.,* because it is able to attract trading interest even during potentially adverse market conditions.[866] This can represent profitable trading opportunities for providers of limit orders, who would otherwise need to raise (in case of a buy limit order) or lower (in case of a sell limit order) their limit prices in order to attract a counterparty. Therefore, information about effective spreads for NMLOs would allow providers of limit orders (and their broker-dealers) to make comparisons across market centers based on the profitability of their limit order strategies. For orders submitted with stop prices, the average effective spread would reflect similar information to the extent that these are NMLOs. For marketable orders submitted with stop prices,[867] the average effective spread would capture information about how much more than the stock's estimated value a trader has to pay for the immediate execution of their order, similarly to how the effective spread currently included in Rule 605 for market and marketable limit orders can be interpreted.

The proposed amendments would require the average effective spread of a NMLO or an order submitted with a stop price to be calculated using the midpoint as of the time of the order's executability, rather than the time of order execution.[868] Providing the average effective spread would allow market participants to measure what liquidity providers expect to earn, which is more informative about expectations of the reporting entities' skill at handling and/or executing orders as compared to a measurement of what liquidity providers actually earn, which can be impacted by market conditions outside of a reporting entities' control.[869]

Third, the proposed amendment requiring reporting entities to report average effective spreads and average realized spreads in percentage terms,[870] in addition to the current requirement to report them in dollar terms,[871] would allow market participants to evaluate and compare the actual per-share dollar premium paid (or amount earned) captured by the spread, and use average percentage measures to compare aggregate spreads across broker-dealers that handle different mixes of stocks and/or stocks with significant price volatility. Since average spread measures represent a per-share cost, the real costs to (or premiums earned by) investors captured by average spread measures can be very different, depending on the stock price.[872] Percentage average spread measures, on the other hand, would better account for these differences in stock prices.[873] As different reporting entities handle and/or transact in different mixes of stocks with varying prices, including information about average percentage spreads would make it possible for market participants who may want to compare reporting entities' overall spread measures or their spread measures for baskets of stocks to aggregate average spreads for a variety of

[857] *See supra* note 513 for an example of how market conditions can influence the time-to-execution of NMLOs.

[858] *See* proposed Rule 605(a)(1)(i)(G) and(I). *See also supra* note 375 and accompanying text.

[859] *See supra* note 377 discussing commenters' suggestions regarding to Rule 605's provisions related to the realized spread.

[860] *See supra* note 701 and accompanying text for a discussion about what the realized spread is intended to measure.

[861] *See* discussion in *supra* section VII.C.2.(c)(5).

[862] *See* discussion of analyses in *supra* section IV.B.4.(a).

[863] *See* Conrad and Wahal.

[864] *See* proposed Rule 600(b)(10). *See also supra* note 386 and accompanying text.

[865] *See supra* note 709 and accompanying text for more details about interpreting effective spreads for NMLOs.

[866] Note that the ability of market centers to execute NMLOs at a wide spread is limited by the prohibited of trade-throughs of protected quotes under Rule 611 of Regulation NMS.

[867] *See supra* Table 4 for a break-down of orders submitted with stop prices according to order type.

[868] *See* proposed Rule 600(b)(10). The time an order becomes executable would be used for NMLOs, beyond-the-midpoint limit orders, and orders submitted with stop prices.

[869] Market participants can use the realized spread to estimate what limit order providers actually earn from liquidity provision. *See supra* note 709.

[870] *See* proposed Rule 605(a)(1)(i)(H), (J), and (L).

[871] *See* 17 CFR 242.605(a)(1)(i)(K) and 17 CFR 242.605(a)(1)(ii)(A).

[872] *See supra* note 712 and accompanying text for an example showing that the total cost of accumulating the same position in terms of dollar value in two stocks with the same per-share dollar effective spread can differ significantly in terms of total transaction costs if one stock is priced much lower than the other.

[873] *See* example in *supra* note 712. While the $250 stock and the $2.50 stock would have the same average effective spread, the average percentage effective spreads of these stocks would be 0.004% and 0.4%, respectively, which indicates that investors would face higher costs from accumulating a position in the $2.50 stock than they would from accumulating an equal-value position in the $250 stock.

stocks with varying prices.[874] This would facilitate a more apples-to-apples comparison of both average effective and average realized spreads across reporting entities.

Fourth, the proposed amendment requiring reporting entities to include information on effective over quoted spreads [875] would increase market participants' access to information about price improvement. The Commission understands that the effective over quoted spread (E/Q) is a measure often used in industry practice.[876] As such, it represents a measure of price improvement that is likely to be easily understood and interpreted by market participants. While E/Q can already be calculated from data currently available in Rule 605 reports,[877] extrapolating an average monthly quoted spread and using that to calculate an average monthly E/Q produces a noisier E/Q measure than an average E/Q calculated on a per transaction basis.[878] Therefore, including this measure would improve upon the accessibility of price improvement information contained in Rule 605 reports by making more readily available a measure that is already used and well understood by industry participants.

Fifth, the proposed amendment expanding Rule 605 reporting requirements to include a measure of size improvement would provide market participants with more information about an additional dimension of execution quality that is currently not fully captured by Rule 605 statistics.[879] The proposed amendment would require reporting entities to report, for executions of covered shares, a benchmark metric calculated as the consolidated reference quote size, capped at the size of the order,[880] which a market participant could compare to the market center's reported number of shares executed at or better than the quote.[881] This would reflect the market center's ability to offer size improvement, which would be particularly beneficial for larger-sized orders, as these orders are the most likely to exceed the liquidity available at the best quotes and therefore benefit the most from size improvement.

If information about size improvement is already captured by current Rule 605 statistics, the addition of the above-described benchmark metric capturing size improvement would not necessarily represent a benefit to transparency. To examine the extent to which a size improvement measure calculated using this benchmark metric would contain information that is different from measures currently required by Rule 605, data from the Tick Size Pilot B.II Market and Marketable Limit Order dataset [882] was analyzed to calculate the average correlation [883] between price improvement, effective spreads, and the size improvement share count divided by the benchmark share count (''size enhancement rate'').[884] As national securities exchanges and off-exchange market centers differ in the extent to which they can offer size and price improvement, staff performed this analysis separately for these two different types of market centers.

Results are presented in Table 8 and show that, for both national securities exchanges and off-exchange market centers, effective spreads are modestly (negatively) correlated with price improvement, confirming that effective spreads contain some of the same information as price improvement measures. Likewise, at least for national securities exchanges, effective spreads are modestly (negatively) correlated with the size enhancement rate, confirming that effective spreads contain some information about size improvement. However, this correlation is nearly zero for off-exchange market centers, implying that effective spreads are a poor measure of size improvement

[874] While the main purpose of Rule 605 is to facilitate comparisons across reporting entities on the basis of execution quality within a particular security, the Commission understands that access to aggregated information is useful for market participants. The proposed amendment to require reporting entities to prepare summary reports that aggregate execution quality information for S&P 500 stocks, along with all NMS stocks, would give market participants access to aggregate effective spreads for one commonly used basket of stocks. Meanwhile, per-stock percentage spread information would enhance market participant's ability to aggregate effective spread information across baskets of stocks other than the S&P 500.

[875] *See* proposed Rule 605(a)(1)(i)(M). *See also supra* note 401 and accompanying text.

[876] *See, e.g., About Us: Brokerage Built for You,* Vanguard, *available at https://investor.vanguard.com/about-us/brokerage-order-execution-quality.*

[877] *See supra* note 399.

[878] To see this, consider a market center that, in a given month, executes two orders of sizes s_1 and s_2, with effective spreads E_1 and E_2 and quoted spreads Q_1 and Q_2. The true share-weighted average E/Q would be $[s_1/(s_1 + s_2) \times (E_1/Q_1)] + [s_2/(s_1 + s_2) \times (E_2/Q_2)]$. On the other hand, approximating the average E/Q from share-weighted average effective and quoted spreads would yield $[s_1/(s_{1\ Q1} + s_{2\ Q2}) \times E_1] + [s_2/(s_{1\ Q1} + s_{2\ Q2}) \times E_2]$. In other words, it yields the weighted effective spread divided by a share-weighted average quoted spread, rather than a share-weighted average of the effective divided by quoted spread.

[879] Liquidity providers have expressed support for a size improvement measure (*see supra* note 405) and have made suggestions regarding measures (*see supra* notes 411–413).

[880] *See* proposed Rule 605(a)(1)(i)(F). As discussed in *supra* section IV.B.4.(e), this metric is meant to capture whether the depth available at the best market prices is sufficient to fully execute against a given order, or whether the order would need to walk the book in order to fully execute.

[881] Continuing the example from section VII.C.2.(c)(6), while the market center's Rule 605 report would reveal a price improvement metric of $0 for this order, the market center's benchmark metric would reveal a consolidated reference quote size of 100 shares, which a market participant could compare to the market center's reported number of shares executed at or better than the quote, which would reveal 200 shares.

[882] *See supra* note 723 for dataset description. The Commission limited this analysis to a randomly selected sample of 100 stocks and for the time period of March 2019. This dataset was then merged with MIDAS data to obtain the consolidated depth available at the NBBO at the time of the market and marketable limit order submissions, along with data on odd-lots and consolidated volume at prices outside of the NBBO. This analysis uses data from prior to the implementation of the MDI Rules and the specific numbers may be different following the implementation of the MDI Rules. In particular, for certain stocks, the NBBO quoted spread is expected to narrow, the liquidity available at the NBBO may decrease, and the NBBO midpoint may change, though the Commission is uncertain of the direction of this effect. This may impact statistics that are based on these values, including measures of price and size improvement and effective spreads. *See supra* section VII.C.1.(d)(2). However, it is unclear whether or how these effects would impact the correlations between these measures documented in this analysis.

[883] Correlation is calculated using the Pearson correlation coefficient, which measures the linear correlation between two sets of data, ranging from −1 to 1, with −1 representing perfect negative correlation and 1 representing perfect positive correlation. To construct a measure of average correlation, the Commission first calculated the Pearson correlation coefficient for each pair of execution quality metrics, for each market center—stock combination. Then the Commission took the value-weighted average correlation coefficient across all stocks for each market center, using dollar volume as weights. Then the Commission averaged the resulting correlation coefficients across market centers using an equal-weighted average.

[884] *See* section IV.B.4.(e) for a definition of the size improvement share count, which captures the number of shares greater than the depth available at the NBBO to which the market center was able to offer the best displayed price. The size improvement share count is divided by the proposed benchmark share count to obtain the size enhancement rate to control for differences in market conditions. For example, if Market Center A has 1,000,000 shares executed at or better than the best displayed price and a benchmark share count of 800,000, and Market Center B has 2,000,000 shares executed at or better than the best displayed price and a benchmark share count of 1,800,000, both market centers would have a size improvement share count of 200,000, but Market Center A would be offering the a higher rate of size improvement since they had fewer shares available to them at the consolidated depth (*i.e.,* a lower benchmark share count). To capture this, the size improvement share count is divided by the benchmark share count, such that Market Center A would have a size enhancement rate of 200,000/800,000 = 25% and Exchange B would have size enhancement rate of 200,000/1,800,000 = 11%. This difference recognizes that Exchange A and Exchange B provided the same number of size improved shares but Exchange A had lower consolidated depth available when it needed to execute.

particularly for these types of market centers.

TABLE 8—AVERAGE CORRELATION BETWEEN MEASURES OF PRICE AND SIZE IMPROVEMENT

Correlations	National securities exchanges (percent)	Off-exchange market centers (percent)
Price Improvement and Effective Spreads	−25.7	−20.5
Size Enhancement Rate and Effective Spreads	−12.0	0.1
Price Improvement and Size Enhancement Rate	31.3	5.9

Table 8: Average Correlation between Measures of Price and Size Improvement. This table presents correlations between three measures of price improvement and size improvement: price improvement, calculated as the signed difference between the execution price and the NBBO; the effective spread, calculated as twice the signed difference between the execution price and the NBBO midpoint; and the size enhancement rate, calculated as the size improvement share count divided by the benchmark share count (*see supra* note 884 and accompanying text for a detailed description of this measure). *See supra* note 723 for dataset description and *supra* note 883 for methodology. This analysis uses data from prior to the implementation of the MDI Rules and results may be different following the implementation of the MDI Rules. *See supra* note 882 and section VII.C.1.(d)(2).

While price improvement and the size enhancement rate are moderately correlated for national securities exchanges, implying that information from these two measures overlaps to some extent, this correlation is comparatively low for off-exchange market centers. The fact that price improvement and the size enhancement rate are not perfectly overlapping (*i.e.,* are not perfectly correlated) implies that each of these measures to some degree conveys different information about execution quality, particularly for off-exchange market centers. Therefore, including information that could be used to calculate a size improvement measure such as the size enhancement rate into Rule 605 reporting requirements would provide market participants with more information about an additional dimension of execution quality that is not fully captured by current Rule 605 statistics.

Lastly, the proposed amendment specifying that market centers should include riskless principal trades in the category of trades executed away from the market center [885] would increase transparency about internalization by wholesalers, as information on the extent to which wholesalers internalize order flow is currently obscured by the inclusion of riskless principal trades into the category of trades executed at, rather than away from, the market center.[886] Market participants would be more informed about potential differences in execution quality between wholesalers that largely internalize order flow as compared to those whose orders are subject to competition from other interested parties quoting on external market centers.

(v) Modifications to Information Required for Market, Marketable Limit, Marketable IOC, and Beyond-the-Midpoint Limit Orders

Several of the proposed amendments would modernize the information required for market, marketable limit, marketable IOC, and beyond-the-midpoint limit orders, which would promote transparency by increasing the relevance of the information contained in Rule 605 reports for these types of orders, including information about time-to-execution and price improvement.

First, the proposed amendment requiring reporting entities to report, for shares executed with price improvement, executed at the quote, or executed outside the quote, a wider range of time-to-execution statistics, including the average,[887] median,[888] and 99th percentile [889] period from the time of order receipt to the time of order execution, would increase transparency about the execution speeds offered by a reporting entity. Given that outliers could skew the share-weighted average time to execution, information about the distribution of execution speeds in addition to the average would be useful.[890] Therefore, including a variety of statistics (mean, median and 99th percentile) would help ensure that market participants have sufficient information about the distribution of time-to-execution in order to account for any outliers. This would facilitate comparisons across reporting entities on the basis of execution speeds.

Second, the proposed amendment requiring, for marketable order types (*i.e.,* market, marketable limit, marketable IOC, and beyond-the-midpoint limit orders), reporting entities to disclose price improvement statistics using the best available displayed price as the benchmark [891] would give market participants access to price improvement information relative to a benchmark price that more accurately reflects liquidity available in the market. For example, if a market center internalizes an order with $0.05 of price improvement relative to the NBBO, but odd-lots are available on another market center at prices that are $0.10 better than the NBBO, this measure would reflect a price dis-improvement of $0.05. This would indicate that the investor could have received a better price if the market center had routed the order to execute against the available odd-lot liquidity.

[885] *See* proposed Rule 605(a)(1)(i)(D). *See also supra* note 418 and accompanying text.

[886] *See supra* section VII.C.2.(c)(8) for a discussion of how classifying riskless principal trades in the category of executions taking place at the market center may obscure the extent to which wholesalers internalize order flow.

[887] For shares executed with price improvement, executed at the quote, or executed outside the quote, respectively, see proposed Rules 605(a)(1)(ii)(C), 605(a)(1)(ii)(G), and 605(a)(1)(ii)(L).

[888] For shares executed with price improvement, executed at the quote, or executed outside the quote, respectively, see proposed Rules 605(a)(1)(ii)(D), 605(a)(1)(ii)(H), and 605(a)(1)(ii)(M).

[889] For shares executed with price improvement, executed at the quote, or executed outside the quote, respectively, *see* proposed Rules 605(a)(1)(ii)(E), 605(a)(1)(ii)(I), and 605(a)(1)(ii)(N).

[890] Consider, for example, a reporting entity (''Reporting Entity A'') that executes one hundred equally-sized orders with a time-to-execution of 1 millisecond, but a single order at a time-to-execution of 100,000 milliseconds (100 seconds), and compare to a reporting entity (''Reporting Entity B'') that executes the same size and amount of orders all at a time-to-execution of 1,001 milliseconds. Both reporting entities' average time-to-execution statistic would be 1,001 milliseconds. However, comparing these two statistics would not reveal that Reporting Entity A nearly always offers a faster execution time than Reporting Entity B, except for a single outlier. Median time-to-execution statistics, however, would reveal that Reporting Entity A has a median time-to-execution of 1 millisecond, while Reporting Entity B has a median time-to-execution of 1,001 milliseconds, which would allow for comparison accounting for Reporting Entity A's outlier.

[891] *See* proposed Rule 600(b)(14) (defining the ''best available displayed price'') and proposed Rule 605(a)(1)(ii)(O) through (S). *See also supra* section IV.5 for further discussion of these amendments.

This would thus allow market participants (including broker-dealers) to identify those market centers that execute orders at prices better than the best available displayed price, taking into account all available displayed liquidity.[892]

(vi) Additional Required Information for Executable NMLOs, Executable Stop Orders, and Beyond-the-Midpoint Limit Orders

The proposed amendments would increase the relevance of the information contained in Rule 605 reports for executable NMLOs, executable stop orders, and beyond-the-midpoint limit orders. Specifically, the proposed amendment requiring reporting entities to report the number of shares that executed while an executable NMLO was in force[893] would promote transparency regarding differences in the execution probabilities of NMLOs between reporting entities.[894] Market participants would be able to determine if a reporting entity is unable to achieve an execution in an executable NMLO despite the fact that a large number of shares are executing at that NMLO's limit price elsewhere in the market, enabling investors and their broker-dealers to make better informed routing decisions. Furthermore, the proposed amendment requiring the reporting of the number of orders that received either a complete or partial fill would provide important additional information about the nature of a market center or broker-dealer's NMLO and stop order executions—*e.g.,* whether a high executed cumulative count represents, on average, larger execution sizes or a higher count of orders receiving executions.[895]

(3) Proposed Summary Execution Quality Reports

The proposed amendment requiring reporting entities to prepare human-readable summary reports[896] would facilitate comparisons across reporting entities on the basis of execution quality by increasing the accessibility of the information contained in Rule 605 reports.[897] The data generated under Rule 605 is complex, and the raw data may be difficult for some market participants to interpret and aggregate. Summary reports would give market participants access to standardized information that could be used to quickly compare across reporting entities. This would be particularly useful for those investors that may not have access to the resources to retrieve and process the raw data in Rule 605 reports, such as some individual investors.

However, as differences in execution quality can be driven by differences between reporting entities other than differences in their skills at handling and/or executing orders, such as differences in the characteristics of their order flow,[898] the Commission recognizes that it is important to strike a balance between sufficient aggregation of orders to produce statistics that are meaningful and sufficient differentiation of orders to facilitate fair comparisons of execution quality across reporting entities.[899] The Commission believes that the statistics required in the summary reports would strike this balance.

(b) Improvements in Execution Quality

The Commission believes that the proposed amendments would serve to improve execution quality for both individual and institutional investors, as these investors would be able to make better informed decisions about where to route their orders to achieve better quality executions. Execution quality would further improve, as the flow of orders and customers to those reporting entities offering better execution quality would promote increased competition on the basis of execution quality, both in the market for brokerage services and in the market for trading services. This would result in improvements to overall levels of execution quality, as well as improvements to particular components of execution quality, such as execution prices, execution speeds, size improvement, and fill rates.

The magnitude of the improvements in order execution quality that individual and institutional investors may experience may be lower when the MDI Rules are implemented, because the availability of faster consolidated market data with more data on odd-lot information, auction information, and depth of book information from competing consolidators could result in improved execution quality for customer orders if their broker-dealers currently utilize SIP data and switch to consuming the expanded consolidated market data. However, there is uncertainty with respect to how these benefits would change because there is uncertainty regarding how the price improvement wholesalers would provide retail investors would change as well as uncertainty regarding how the NBBO midpoint will change for stocks with prices above $250 when the MDI Rules are implemented.[900] The Commission believes that the Proposal would still lead to improvements in individual and institutional investor order execution quality, as well as improvements in price discovery, relative to a baseline in which The MDI Rules are implemented.

(1) Increased Competition on the Basis of Execution Quality

The Commission believes that the proposed amendments would have the general effect of increasing levels of execution quality, as both broker-dealers and market centers would experience increased competition on the basis of execution quality. The Commission expects that these improvements in overall levels of execution quality would likely be the result of improvements to broker-dealer routing practices and improvements to market centers' execution practices, as well as generally improvements in market participants' ability to use Rule 605 reports to compare information across reporting entities as a result of better and more accessible data.

[892] If only the NBBO is used as the benchmark for the proposed price improvement statistic relative to the best available displayed price, because, for example, odd-lots inside the NBBO are not available or because information about the best odd-lot orders available in the market inside the NBBO is not or is not yet available in consolidated market data, then these additional price improvement statistics would be the same as the price improvement statistics currently included in Rule 605 and would not have significant economic effects. *See supra* note 423.

[893] *See* proposed Rule 605(a)(1)(iii)(B). *See also supra* section IV.B.6 for further discussion of this proposed amendment.

[894] One commenter suggested a similar execution quality metric called a ''non-marketable benchmark.'' *See supra* notes 442–443 and accompanying text.

[895] For example, say that a reporting entity discloses in its Rule 605 reports that it received 100 orders sized 100 round lots or greater in a stock with a 100-share round lot, with a and that these orders had a cumulative number of shares of 1,000,000, and furthermore that it executed 990,000 of those shares. Information on the number of complete or partial fills would help to clarify whether the reporting entity, *e.g.,* executed 99 orders of 10,000 shares each, or a single order of 990,000 shares.

[896] *See* proposed Rule 605(a)(2). *See also supra* note 462 and accompanying text.

[897] In several contexts in which the Commission has received general feedback on equity market structure, commenters have suggested that the Commission require a simplified execution quality report, particularly for retail investors. *See supra* notes 135–138 and corresponding text. Commenters have also suggested that the Commission require broker-dealers to produce a summary report. *See supra* notes 451–454.

[898] *See supra* note 513 for an example of how differences in order flow characteristics may impact inferences about execution quality.

[899] *See, e.g.,* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75423.

[900] *See supra* section VII.C.1.(d)(2) for further details on how the rules adopted in Market Data Infrastructure could affect the NBBO.

(a) Improvements to Broker-Dealer Routing Practices

The Commission believes that execution quality would improve as a result of increased competition between broker-dealers on the basis of execution quality.[901] The proposed amendment expanding the scope of Rule 605 reporting entities to include larger broker-dealers would promote increased transparency regarding the execution quality achieved by broker-dealers.[902] Hence, market participants would be better able to compare execution quality information across broker-dealers. Customers could then use this information to compare across broker-dealers and select those broker-dealers offering better execution quality. The flow of customers to the broker-dealers that provide better execution quality would improve the execution quality of customers that route their orders to high-quality broker-dealers and also increase the extent to which broker-dealers rely on execution quality information when making their order routing decisions in order to compete with other broker-dealers for customer order flow.

Broker-dealers would increase their competitive position with respect to execution quality by investing in or otherwise adjusting their routing practices to increase the extent to which they route orders to the market centers offering better execution quality and limit the extent to which they route orders for other potential reasons. For example, broker-dealers that face conflicts of interest that would otherwise misalign their interests with their customers' interest in receiving the best possible execution quality would be better incentivized to manage these conflicts as a result of an increase in their need to compete on the basis of execution quality.[903] Specifically, as the gains to broker-dealers of conflicted routing practices would be more likely to be outweighed by a loss of customer order flow, because they offer lower execution quality, these broker-dealers would base more of their routing decisions on the execution quality of market centers, rather than on which market centers are more likely to benefit them (*e.g.,* because of higher PFOF or lower access fees).

The magnitude of the improvements in order routing practices may be lower when the MDI Rules are implemented, because the availability of faster consolidated market data with more data on odd-lot information, auction information, and depth of book information from competing consolidators could result in improved order routing for customer orders if their broker-dealers currently utilize SIP data and switch to consuming the expanded consolidated market data.[904] However, the Commission believes that the proposed amendments would lead to improvements in broker-dealer order routing decisions relative to a baseline in which the MDI Rules are implemented.

(b) Improvements to Market Centers' Execution Practices

The Commission believes that execution quality would improve as a result of increased competition between market centers on the basis of execution quality. As a result of the proposed amendments' effects increasing the transparency of reporting entities' execution quality, including market centers,[905] broker-dealers would be better informed about the execution quality of market centers when making their routing decisions. The flow of orders to those market centers that provide better execution quality would improve the execution quality of those broker-dealers (and their customers) that route their orders to these higher-quality market centers, and also increase the extent to which market centers must improve their execution practices in order to better compete with other market centers to attract customer order flow.

The flow of orders to market centers that provide better execution quality would be further enhanced by improvements in broker-dealer routing practices,[906] resulting from an increase in the extent to which broker-dealers [907] compete on the basis of execution quality as a result of the proposed amendments increasing the transparency of larger broker-dealers' execution quality.[908] Broker-dealers would be more likely to account for market centers' execution quality, further promoting the flow of orders to market centers offering better execution quality. The flow of orders to those market centers offering better execution quality could also result in further improvements in execution quality for their customers, as liquidity externalities and the consolidation of orders onto high-quality market centers would increase the liquidity of these venues.[909]

Additionally, the proposed amendments modifying the scope of reporting entities to specify that broker-dealers post separate Rule 605 reports for their ATSs and require that market centers operating SDPs and qualified auctions post separate reports for each market center would facilitate comparisons of execution quality across similar types of market centers, by allowing market participants to be better informed about the execution quality of each type of market center.[910] This would increase the extent to which these market centers would compete on the basis of execution quality in order to attract orders.

The magnitude of the improvements in execution practices may be lower when the MDI Rules are implemented, because the availability of faster consolidated market data with more data on odd-lot information, auctions information, and depth of book information from competing consolidators could result in more informed customer order routing by broker-dealers that switch to consuming the expanded consolidated market data, which could separately increase the flow of orders to trading venues offering better execution quality.[911] However, the Commission believes that the proposed amendments would lead to improvements in execution practices over and above the improvements that might result from the implementation of the MDI Rules.

[901] The Commission believes that these effects would principally accrue to larger broker-dealers, who would be required to prepare Rule 605 reports, but may spill over to effect smaller broker-dealers as well. *See* discussion in *infra* section VII.D.1.(d)(1).

[902] *See supra* section VII.D.1.(a)(1)(a) for a discussion of how the proposed amendment requiring larger broker-dealers to publish Rule 605 reports would promote increased transparency about the execution quality of larger broker-dealers.

[903] *See supra* section VII.C.2.(a)(1) for a discussion of potential conflicts of interest in broker-dealer routing decisions.

[904] *See supra* section VII.C.1.(d)(2) for further discussion.

[905] *See supra* section VII.D.1.(a)(2) for a discussion of how the proposed modifications to Rule 605 disclosure requirements would promote increased transparency about execution quality.

[906] *See supra* section VII.D.1.(b)(1)(*a*) for a discussion of the effects of the proposed amendments on broker-dealer routing practices.

[907] The Commission believes that these effects would principally accrue to larger broker-dealers, but may spill over to effect smaller broker-dealers as well. *See supra* note 901.

[908] *See supra* section VII.D.1.(a)(1)(*a*) for a discussion of how the proposed amendment requiring larger broker-dealers to publish Rule 605 reports would promote increased transparency about the execution quality of larger broker-dealers.

[909] However, liquidity externalities may have adverse effects on the competition between market centers if they result in the exit of some market centers. *See infra* section VII.D.1.(d)(4) for a discussion.

[910] *See supra* section VII.D.1.(a)(1) for a discussion of how the proposed amendments modifying the scope of reporting entities would promote increased transparency about execution quality.

[911] *See supra* section VII.C.1.(d)(2) for further discussion.

(c) Improvements to Information Used To Make Apples-to-Apples Comparisons of Execution Quality

The Commission believes that competition between reporting entities on the basis of execution quality would also be enhanced by the proposed amendments modernizing the information included in Rule 605 reports used to make apples-to-apples comparisons of execution quality. Some of the information required to be reported by Rule 605 does not measure execution quality directly but serves the purpose of providing context to execution quality metrics. This enables investors to make better apples-to-apples comparisons across reporting entities whose order flows consist of different mixes of securities, order sizes, and order types,[912] and to ascertain how entities may handle orders during different market conditions.[913] If market participants have access to more (and/or more relevant) information that improves their ability to compare execution quality across reporting entities, this would further promote competition between reporting entities on the basis of execution quality, resulting in improvements in execution quality for investors. Such information includes the proposed amendments expanding and modernizing order size and order type categories,[914] which permit market participants to control for potential differences in the characteristics of reporting entities' order flow, as well as the proposed amendments modifying the calculation of realized spreads,[915] which allows market participants to control for potential differences in the extent to which reporting entities handle orders during periods of adverse market conditions.

Furthermore, as market participants have access to more useful information about the execution quality of particular order types and sizes, the extent to which reporting entities would need to compete on the basis of execution quality to attract these types of orders would increase, and order flow would accumulate to the reporting entities offering the highest execution quality for these types of orders. This would in turn translate into improved execution quality for investors for these types of orders. For example, as a result of the proposed amendment expanding the order size categories to include information about odd-lots, market participants' improved access to information about a market center's offering of price improvement and timely execution of odd-lots would improve both the price and speed at which odd-lot orders are executed, which would be beneficial for both institutional and individual investors.[916]

(d) Improvements to Accessibility

The Commission believes that execution quality would also increase as a result of the proposed amendment requiring reporting entities to prepare human-readable summary reports,[917] as market participants would be better able to use information from Rule 605 reports to compare execution quality across reporting entities and competition between reporting entities on the basis of execution quality would increase as a result.[918] Specifically, individual investors, who may be less likely to have access to the resources to retrieve and process the raw data in Rule 605 reports, would be better able to access information from Rule 605 reports to compare execution quality across larger broker-dealers, which would increase the extent to which these broker-dealers would need to compete on the basis of execution quality to attract and retain these customers.

(2) Improvements to Components of Execution Quality

The Commission believes that the proposed amendments would have the effect of improving the quality of executions along specific dimensions of execution quality, including execution prices, size improvement, execution speeds, and execution probabilities (*i.e.,* fill rates), as investors (and their broker-dealers) would be better able to identify and route orders to those reporting entities that offer better quality executions in terms of a particular dimension of execution quality,[919] and as reporting entities would further compete with one another on the basis of these dimensions of execution quality.[920] The Commission believes that the proposed amendments would lead to improvements in execution quality relative to a baseline in which the MDI Rules are implemented, *i.e.,* over and above any improvements in execution quality that may result from the implementation of the MDI Rules.[921]

(a) Execution Prices

The Commission believes that the proposed amendments would improve execution quality in terms of execution prices by increasing the extent to which reporting entities seek out executions at prices better than the NBBO; *i.e.,* increasing the extent to which market centers execute order with price improvement, and/or increasing the extent to which broker-dealers route to market centers offering price improvement.

First, the proposed amendment to require information on the average percentage effective spread in addition to the average effective spread in dollar terms would facilitate more apples-to-apples comparisons of execution prices across reporting entities, permitting greater competition and resulting in lower effective spreads; *i.e.,* better execution prices.[922] Second, the proposed amendment to require information about effective spreads for NMLOs, in addition to market and marketable limit orders, would allow providers of limit orders (and their broker-dealers) to make comparisons across market centers based on the profitability of their limit order strategies, permitting greater competition and resulting in lower (*i.e.,* more negative) effective spreads for NMLOs.[923] Third, the proposed amendment to require price improvement statistics using the best available displayed price as the benchmark for market, marketable limit,

[912] *See supra* note 513 for an example of how differences in order flow characteristics may impact inferences about execution quality.

[913] *See supra* note 701 and accompanying text for a discussion of how handling order flow during adverse market conditions affects execution quality.

[914] *See supra* sections VII.D.1.(a)(2)(*b*) and VII.D.1.(a)(2)(*c*)(i)–(ii) for discussions of how the proposed amendments expanding the coverage of orders, as well as modifying the existing order type and size categories, respectively, would promote increased transparency about execution quality.

[915] *See supra* section VII.D.1.(a)(2)(*c*)(iv) for a discussion of how the proposed amendments modifying the reporting requirements for realized spreads, including expanding and modernizing the time horizon used to calculate the average realized spread, as well as including information about percentage average realized spreads, would promote increased transparency about execution quality.

[916] *See supra* section VII.C.2.(b)(1)(*a*) for a discussion of the use of odd-lots by both individual and institutional investors.

[917] *See* proposed Rule 605(a)(2). *See also supra* note 462 and accompanying text.

[918] *See supra* section VII.D.1.(a)(3) for a discussion of how the proposed amendment requiring reporting entities to prepare human-readable summary reports would result in increased transparency about execution quality.

[919] *See supra* section VII.D.1.(a) for a discussion of the benefits to the proposed amendments for increased transparency.

[920] *See supra* section VII.D.1.(b)(1) for a discussion of the impact of the proposed amendments on competition between reporting entities on the basis of execution quality.

[921] *See supra* section VII.C.1.(d)(2) for further discussion.

[922] *See supra* section VII.D.1.(a)(2)(*b*)(iv) for a discussion of the effect of the proposed amendment to include the average percentage effective spread on transparency.

[923] *See id.* for a discussion of the effect of the proposed amendment to include the average effective spread for NMLOs on transparency.

marketable IOC, and beyond-the-midpoint limit orders, would promote incentives for reporting entities to seek out or offer price improvement relative to the best displayed price, taking into account all available displayed liquidity (including odd-lots).[924] Continuing the example from section VII.C.2.(c)(6), in which a market center internalizing an order could post a positive price improvement metric even though a better-priced odd-lot was available at another market center, this would not be the case for price improvement metrics measured relative to the best displayed price. Instead, the market center may be incentivized to increase its offering of price improvement from $0.05 above the NBBO to $0.15 above the NBBO (*i.e.,* $0.05 above the best displayed price), in order to maintain the same level of price improvement in its Rule 605 report. Lastly, the proposed amendment to require reporting entities to report effective over quoted spreads would make more readily available a measure that is already often used and well understood by industry participants, and would result in improved execution prices as a result of the effects on competition.[925]

(b) Size Improvement

The proposed amendments would improve execution quality in terms of size improvement by increasing the extent to which market centers execute orders beyond the liquidity available at the NBBO; *i.e.,* execute order with size improvement, and by increasing the extent to which broker-dealers route to market centers offering size improvement. The proposed amendment would require reporting entities to report a benchmark metric calculated as the consolidated reference quote size, capped at the size of the order.[926] In order to attract broker-dealer order flow,[927] market centers would be incentivized to compete on the basis of size improvement, for example by executing orders against their own inventory at or better than the NBBO, or offering additional incentives to attract hidden liquidity priced at or better than the NBBO. Investors that particularly value the ability of reporting entities to offer size improvement, such as investors trading in larger order sizes, would be able to use this metric to discern which reporting entity might offer better size improvement to their orders, which would allow them to make better routing decisions and obtain increased size improvement as a result.[928] Competition on the basis of size improvement among reporting entities would also increase in order to attract these customers and their orders.

(c) Execution Speeds

The proposed amendments would also improve execution quality by increasing execution speeds for those investors that value fast executions.[929] The proposed amendments increasing the granularity of the timestamp conventions required by Rule 605 from seconds to milliseconds, replacing the time-to-execution categories currently defined in Rule 605 with time-to-execution statistics, and measuring time-to-execution for NMLOs from the time that the order becomes executable, rather than from the time of order receipt, would lead to improved execution times for investors, as the increased transparency around reporting entities' execution times would increase their ability to identify and route orders to reporting entities offering faster execution speeds.[930]

Investors that may prioritize fast execution times would be able to better identify the reporting entities offering better execution quality in terms of time-to-execution. Different investors benefit from faster execution times for different reasons. Individual investors often benefit from faster executions to the extent that faster executions result in better prices. For example, market orders benefit from fast execution as any delay in execution could result in worse price if prices are increasing (for buy orders) or decreasing (for sell orders). This is particularly true for market orders submitted with stop prices, which tend to be triggered during rapidly declining markets, and which an analysis finds constitute 6.44% of market orders submitted by individual investors.[931] For IOCs, a faster execution implies a faster routing time, which would reduce the chance of another order stepping in and removing liquidity before the order gets a chance to execute, thus increasing the order's probability of execution.

For institutional investors, the benefits of fast execution may be different.[932] Institutional investors, who often need to trade large positions, may care more about reducing the price impact of their order rather than executing the order quickly.[933] However, the academic literature suggests that institutional investors with short-lived private information may benefit from faster time-to-executions, as they are able to profit from trading against other, slower institutions.[934] On the same note, faster time-to-executions benefit slower institutional investors by reducing their exposure to adverse selection as much as possible.[935] Institutional investors may also care about the execution speed of their child orders.

[924] *See supra* section VII.D.1.(a)(2)(*b*)(v) for a discussion of the effect of the proposed amendments related to include information about price improvement relative to the best displayed price on transparency.

[925] *See supra* section VII.D.1.(a)(2)(*b*)(iv) for a discussion of the benefits to transparency of the proposed amendments related to include information about E/Q into Rule 605 reporting requirements.

[926] *See supra note* 720 for an example.

[927] *See supra* section VII.D.1.(b)(1)(*a*) for a discussion of how the proposed amendments would increase competition between broker-dealers on the basis of execution quality.

[928] For example, compare the example of Market Center B offering size improvement to a 200-share order in note 718, *supra,* to the example of Market Center B offering price improvement to a 100-share order in note 719, *supra.* A trader that tends to submit 200-share orders would want to know a market center's ability to offer the first scenario, while a trader that tends to submit 100-share orders would want to know the market center's ability to offer the second scenario. However, in both examples the Rule 605 report would show an effective spread statistic of $0.05 for orders in the order size category of 100–499 shares, which means that these traders would not be able to use this statistic to discern a market center's execution quality according to the dimension of execution quality that they find most valuable.

[929] *See supra* section VII.C.2.(c)(4) for a discussion of current executions speeds. The Commission expects these benefits to mainly accrue to investors that value faster executions, as these investors (and their broker-dealers) would benefit from an improved ability to compare execution speeds across trading venues and route their orders accordingly. However, to the extent that changes in order flow would result in an increase in market centers' incentives to offer faster executions, *e.g.,* by investing in faster trader technology, this could result in a market-wide increase in trading speeds for all investors.

[930] *See supra* section VII.D.1.(a)(2)(*b*)(iii) for a discussion of how these amendments to timestamp conventions would promote transparency on the basis of execution quality.

[931] *See* Table 4 in *supra* section VII.C.2.(b)(2).

[932] While institutional investors are likely to have access to alternative sources of more granular information about execution speeds, such as reports obtained through TCA, the information on execution quality that is individually collected by institutional investors is typically non-public and highly individualized, and therefore limited to the execution quality obtained from broker-dealers with which the institutional investors currently does business. Since Rule 605 reports are public, institutional investors could use these reports to assess the execution quality of the broker-dealers and market centers with which they do not currently do business. *See supra* section VII.C.1.(c)(2) for further discussion.

[933] *See supra* section VII.C.3.(a)(1)(*b*) for a discussion of the handling of institutional orders by broker-dealers as not held orders.

[934] *See, e.g.,* Ohad Kadan, Roni Michaely & Pamela C. Moulton, *Trading in the Presence of Short-Lived Private Information: Evidence from Analyst Recommendation Changes,* 53 J. Fin. Quantitative Analysis 1509 (2018).

[935] *See, e.g.,* Jonathan Brogaard, Bjorn Hagströmer, Lars Nordén & Ryan Riordan, *Trading Fast and Slow: Colocation and Liquidity,* 28 Rev. Fin. Stud. 3407 (2015).

(d) Fill Rates

The Commission believes that the proposed amendments would improve execution quality in terms of increased fill rates.[936] Specifically, the proposed amendment for reporting entities to report the number of shares that executed while an executable NMLO was in force would increase the ability of investors and their broker-dealers to route orders to those reporting entities with higher fill rates of executable NMLOs, as market participants would have access to information about the extent to which a NMLO did not execute or executed after a large number of shares executed elsewhere in the market, despite the fact that the NMLO was executable.[937] In order to attract this order flow, reporting entities would need to improve their ability to achieve executions for executable NMLOs. Market centers could achieve higher fill rates for NMLOs, for example, by reducing access fees to encourage more marketable orders to execute against resting NMLOs, or by discouraging excessive submissions and cancellations of NMLOs, for example by instituting or raising excessive messaging fees.[938] Broker-dealers could achieve higher fill rates for NMLOs by improving their order routing methods and by routing orders to market centers that achieve higher fill rates for NMLOs.

(c) Other Benefits

To the extent that the proposed amendments to Rule 605 increase incentives for reporting entities to compete in areas other than improved execution quality, customers may benefit from improvements that are not directly related to execution quality, such as lower fees, higher rebates, new products or functionalities, or better customer service. Note that improvements in other quality areas as a result of the increase in competition among reporting entities may be either complementary to or a substitute for improvements in execution quality. Investors are more likely to see an overall benefit from the proposed amendments to the extent that these improvements are complementary. Furthermore, to the extent that the proposed amendments increase competition in related markets, market participants could benefit from lower costs and/or improved quality in these markets. For example, the quality of TCA reports may improve if their publishers need to offer better products in order to complete with the publicly available data under Rule 605.

(d) Potential Limitations to Benefits

There are certain factors, however, that could limit the effects of the proposed amendments on transparency and competition, which would limit the effectiveness of the proposed amendments in improving execution quality.

(1) Effect on Smaller Broker-Dealers

The expanded scope of Rule 605 only includes larger broker-dealers. Hence, investors, as they gain transparency into the execution at these larger broker-dealers, may route more transactions to these broker-dealers at the expense of smaller broker-dealers who are not included in the scope of Rule 605. That said, smaller broker-dealers may gain a competitive advantage in the form of lower costs as a result of not having to prepare Rule 605 reports. Also, increased levels of competition between larger broker-dealers may spill over to affect smaller broker-dealers, as their customers may expect more transparency, and smaller broker-dealers would continue to be able to publish ad hoc execution quality reports that focus on execution quality metrics in which they perform well.[939] Altogether, the Commission preliminarily believes that the cumulative effects on smaller broker-dealers, who handle only a small fraction of all orders,[940] are likely to be minimal, and limiting the scope of Rule 605 to large broker-dealers should suffice for the purposes of achieving the competitive effects discussed in prior sections.[941]

It is also possible that, as a result of the proposed amendments, smaller broker-dealers that are unable,[942] or choose not, to offer the same levels of transparency as larger broker-dealers may lose customers to larger broker-dealers for which better execution quality information is available, which could cause some smaller broker-dealers to exit the market. The Commission is unable to quantify the likelihood that a brokerage firm would cease operating as a result of the proposed amendments. Even if some smaller broker-dealers were to exit, the Commission does not believe this would significantly impact competition in the market for brokerage services because the market is served by a large number of broker-dealers.[943] The Commission recognizes that smaller broker-dealers may have unique business models that are not currently offered by competitors, but the Commission believes other broker-dealers, including new entrants, could create similar business models if demand was adequate.

(2) Switching Costs

The effects of the proposed amendments on competition among reporting entities [944] may be limited if investors incur high costs to switch between broker-dealers, and/or if broker-dealers incur costs to switch between market centers in response to information about execution quality. To the extent that competition between reporting entities on the basis of execution quality is limited, this would limit the extent to which execution quality would improve as a result of the proposed amendments.[945]

[936] *See supra* note 519 for a definition of the fill rate.

[937] *See supra* section VII.D.1.(a)(2)(*b*)(vi) for a discussion of how the proposed amendment requiring reporting entities to report the number of shares that executed while an executable NMLO was in force increase transparency.

[938] *See, e.g., Price List—Trading Connectivity,* NASDAQ, *available at https://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2,* which describes how one market center charges its members a penalty for exceed a certain ''Weighted Order-to-Trade Ratio.''

[939] These information asymmetries are described in more detail in *supra* section VII.C.1.(a).

[940] *See infra* section VII.E.1.(a) for a discussion of an analysis showing that broker-dealers with 100,000 customers or greater handled 66.6% of customer orders and 1.5% of customer accounts identified in the data sample. Note that, if these smaller broker-dealers would attract enough customers such that they represent a more significant fraction of orders, it is likely they would also subsequently fall above the customer account threshold and be required to begin publishing Rule 605 reports.

[941] *See supra* section VII.D.1.(b)(1) for a discussion of the effects of the proposed amendments on competition between reporting entities on the basis of execution quality.

[942] For example, if investors make use of third-party summaries of Rule 605 reports, these summaries may not incorporate execution quality information outside of ''official'' Rule 605 reports. In that way, smaller broker-dealers would be unable to offer the same level of transparency even if they were to prepare an execution quality report containing all of the information and according to the exact specifications of Rule 605.

[943] *See supra* section VII.C.3.(a)(1) for a discussion of the current structure of the market for brokerage services.

[944] *See supra* section VII.D.1.(b)(1) for a discussion of the effects of the proposed amendments on competition between reporting entities on the basis of execution quality.

[945] The effect of switching costs on competition may also depend on the variability of reporting entities' execution quality over time. For example, if the execution quality of any given reporting entity varies significantly over time, customers of those reporting entities may find it optimal to switch between reporting entities with some frequency, which would increase their overall switching costs. On the other hand, if the execution quality of reporting entities is relatively constant over time, the number of times that a customer would optimally want to switch between reporting entities would likely be more limited, and in this case switching costs may be a relatively small and/or short-term friction.

First, if the costs for customers to switch broker-dealers are significant,[946] this would limit the extent to which Rule 605 promotes competition among broker-dealers on the basis of execution quality. However, switching costs for both individual and institutional investors may be limited. For example, institutional investors are likely to have multiple broker-dealers, which would facilitate the transfer of business to better-performing broker-dealers, and, for individual investors, transferring between retail brokers may be less costly, for example, because some retail brokers will compensate new customers for transfer fees that their outgoing broker-dealer may charge them.[947]

Second, the presence of switching costs that broker-dealers incur from changing the primary trading venues to which they route orders [948] may limit the effects of the proposed amendments on competition among market centers. However, the Commission expects this to be less of an issue for the larger broker-dealers that would be required to produce Rule 605 reports,[949] as these broker-dealers would likely face lower switching costs. For example, larger broker-dealers are likely already connected to multiple national securities exchanges. They are experienced with routing order flow across a larger variety of market centers and/or have sufficient bargaining power to renegotiate any agreements that they might have with individual market centers.

(3) Limited Usage and Search Costs

The benefits of the proposed amendments for transparency, competition, and execution quality may be limited if market participants are not likely to make use of the additional information available under the proposed amendments, *e.g.,* because this information is difficult to access or is not useful to market participants due to the availability of other sources of information about execution quality.

For example, investors currently have access to information about the execution quality achieved by their broker-dealers for their not held orders,[950] which in certain circumstances may be more relevant for institutional investors than aggregate information about the execution quality of broker-dealers' held orders [951] and may lead to a low usage rate by institutional investors of larger broker-dealers' Rule 605 reports as proposed to be required. This would limit the benefits of the proposed amendments for competition in the market for institutional brokerage services. However, to the extent that institutional investors' alternative sources of execution quality information do not contain information about all of their relevant orders, and/or cannot be easily used to compare across broker-dealers that an investors does not do business with,[952] the proposed amendments would likely impact competition for institutional brokerage services as well.

Furthermore, the volume and complexity of data produced by Rule 605 reports (*i.e.,* both the number of rows and columns of Rule 605 reports) would increase as a result of the proposed amendments to modify the coverage of orders and expand the information required by Rule 605. Both of these factors could make the evaluation of the raw data in Rule 605 reports costlier. If, in order to avoid this additional complexity, market participants would not incorporate the data elements or orders types that are proposed to be added to Rule 605 reports under the proposed amendments into their analyses of consumption of Rule 605 data, this would limit the potential benefits of the proposed amendments. However, market participants that currently have the resources to process and analyze the raw data contained in Rule 605 reports are likely to have the resources to process and analyze the additional data elements. To the extent that some investors may not have access to the resources to directly analyze the raw Rule 605 as a result of its increase in complexity,[953] the Commission expects that independent analysts, consultants, broker-dealers, the financial press, and market centers would continue to respond to the needs of investors by analyzing the disclosures and producing more digestible information using the data.[954]

The benefits of the proposed amendments for transparency, competition, and execution quality may also be limited by the presence of search costs. The proposed amendments are expected to increase the number of Rule 605 reporting entities from 236 to 359.[955] For those market participants that would seek to collect a complete or mostly complete set of Rule 605 reports, these market participants would need to search through and download reports from a greater number of websites, which would increase their search costs.[956] If, in order to avoid this increase in search costs, market participants would not incorporate execution quality information from the proposed additional reporting entities into their search or analysis of Rule 605 reports, this would limit the benefits of the proposed expansion of Rule 605 reporting entities.

(4) Liquidity Externalities

The effects of the proposed amendments on competition between market centers [957] may be limited by the development of liquidity externalities, or the consolidation of liquidity on a few dominant market centers.[958] Under such circumstances, while the consolidation of liquidity on market centers offering superior execution quality may benefit market participants in the short run, it may also lead to barriers to entry in the market for trading services, as new entrants may have a harder time attracting sufficient liquidity away from established liquidity centers. This could also lead to consolidation or exit by smaller market centers. This could have the effect of reducing competition in the market for trading services. The Commission is unable to quantify the likelihood that

[946] *See supra* section VII.C.3.(a)(1) for a discussion of switching costs related to switching broker-dealers.

[947] *See supra* note 745 for an example.

[948] *See supra* section VII.C.3.(b)(1) for discussions of switching costs broker-dealers may face when switching trading venues.

[949] The Commission believes that the competitive effects of the proposed amendments would principally accrue to larger broker-dealers, who would be required to prepare Rule 605 reports, and thus these would be the broker-dealers most likely to be incentivized to switch market-centers as a result of additional information about market center execution quality. However, these effects may spill over to smaller broker-dealers as well per the discussion in *supra* section VII.D.1.(d)(1). For these smaller broker-dealers, switching costs may be more binding.

[950] *See supra* note 60 and accompanying text discussing broker-dealers' requirements under Rule 606(b)(3) to provide individualized reports of execution quality upon request for not held orders.

[951] *See supra* section VII.C.3.(a)(1)(*b*) for a discussion of institutional investors' usage of not held orders.

[952] *See* discussion in *supra* section VII.C.1.(c)(2).

[953] *See supra* section VII.C.1.(c)(1) for a discussion of the difficulties that individual investors may face when accessing Rule 605 reports.

[954] *See supra* note 545–546 for examples of how third parties currently use Rule 605 data to produce information meant for public consumption.

[955] *See supra* section VI.C for a description of these estimates.

[956] *See supra* section VII.C.2.(d) for a discussion of the search costs associated with collecting information from Rule 605 reports.

[957] *See supra* section VII.D.1.(b)(1) for a discussion of the effects of the proposed amendments on competition between reporting entities on the basis of execution quality.

[958] For theoretical discussions of liquidity externalities see Marco Pagano, *Trading Volume and Asset Liquidity,* 104 Q. J. Econ. 255 (1989): Ananth Madhavan, *Consolidation, Fragmentation, and the Disclosure of Trading Information,* 8 Rev. Fin. Stud. 579 (1995).

some smaller market centers would cease operating.

(5) Dimensions of Execution Quality Not Captured by Rule 605 Reports

The expected benefits from the proposed amendments to Rule 605 may be lessened to the extent that there are dimensions of execution quality not captured by Rule 605 reports which drive order handling decisions. For example, the ability of customers and/or traders to remain anonymous or limit information leakage may not be a dimension that is easily discernible from looking at Rule 605 data, though it is a feature of execution quality that may be valued by some investors.[959] Similarly, the extent to which the reported statistics are perceived to fail to serve as an acceptable or timely proxy for a reporting entities' ability to secure favorable executions may dampen the benefits of proposed amendments for execution quality. This may happen if, for example, future market developments render the monthly reporting requirement to be too infrequent to be useful.

2. Costs

As discussed in detail below, the Commission recognizes that the proposed amendments to Rule 605 would result in initial and ongoing compliance costs to reporting entities. The Commission quantifies the costs where possible and provides qualitative discussion when quantifying costs is not feasible. Most of the compliance costs related to the proposed amendments to Rule 605 involve a collection of information, and these costs are discussed above in relation to the expected burdens under the Paperwork Reduction Act, with those estimates being used in the economic analysis below.[960]

(a) Compliance Costs

The Commission believes that the majority of costs related to the proposed amendments would be in the form of compliance costs, including both initial and ongoing. Table 9 provides a summary of the estimated change in compliances costs [961] resulting from the proposed amendments. The majority of both initial and ongoing compliance costs would be related to the proposed expansion of the scope of reporting entities. However, a significant portion of initial compliance costs would also result from the proposed amendments modifying the coverage of orders and information required by Rule 605, as current reporters would need to update their systems and additionally some new market centers trading in fractional shares would be required to report. Lastly, compliance costs resulting from the proposed amendment requiring reporting entities to prepare summary execution quality reports would mostly be ongoing.

TABLE 9—ESTIMATED COMPLIANCE COSTS, BY COST CATEGORY

Cost category	Initial compliance costs (million)	Ongoing compliance costs (million)
Expanding the Scope of Reporting Entities	$3.8	$3.9
Modifications to Information Required	3.4	1.9
Proposed Summary Execution Quality Reports	1.7	1.1
Total	8.9	6.8

Table 9: Estimated Compliance Costs, by Cost Category. This table presents estimates of the compliance costs related the to three broad categories of the proposed amendments to Rule 605 (expanding the scope of reporting entities, modifications to the coverage of orders and information required, and the proposed amendment requiring the preparation of summary reports). Numbers are based on the estimated number of respondents and PRA costs in sections VI.C and VI.D *supra* and have been rounded to the nearest tenth of million to avoid false precision. Further breakdowns of these estimates are presented in Tables 10, 11, and 12.

Table 9 further breaks compliance costs down into three separate categories—costs related to the expansion of reporting entities, costs related to modifications to information required, and costs related to the preparation of summary execution quality reports.

Estimates for the costs in each of these categories depend on a number of factors, including wages, inflation, and firm size, and the Commission acknowledges that the costs presented could be underestimated to the extent that wages and/or inflation are higher than those used in the estimation. Meanwhile, costs in each of these categories may also be overestimated if, instead of preparing reports in-house, reporting entities contracted with third-party vendors to prepare their reports.[962] The costs in Table 9 are based on the assumption that reporting entities would prepare their Rule 605 reports in-house. Due to their ability to leverage their technical expertise and potential economies of scale, third-party vendors may be able to prepare Rule 605 reports for a lower cost than if each individual reporting entity prepares its own report, and could pass these lower costs on to their customers, resulting in lower compliance costs. However, the Commission is unable to know the percentage of entities that currently make use of third-party vendors to prepare their Rule 605 reports, nor the percentage of entities that would make use of third-party vendors following the proposed amendments. Therefore, Commission is basing its compliance cost estimates on the potentially higher costs of in-house preparations of Rule

[959] *See, e.g.,* Carole Comerton-Forde & Kar Mei Tang, *Anonymity, Liquidity and Fragmentation,* 12 J. Fin. Mkt. 337 (2009), who found evidence of evidence of a migration in order flow from the non-anonymous New Zealand Exchange (NZX) to the Australian Stock Exchange after the latter increased anonymity by removing broker identifiers from the central limit order book.

[960] *See supra* section VI.D for a discussion of how the proposed amendments would create burdens under the PRA.

[961] Note that the discussion in section VI.D considers the total expected ongoing compliance costs for all reporting entities, both new respondents and current respondents. To focus on the costs that would directly follow from the proposed amendments, this section focuses on the expected change in ongoing costs, which excludes the portions of ongoing costs that current respondents currently incur.

[962] Specifically, the Commission estimates that, while preparing in-house reports would result on an annualized ongoing cost of $37,248 per respondent, contracting with a third party to prepare Rule 605 of their behalf would result in an annualized ongoing cost of $36,000 per respondent. *See supra* section VI.D. The Commission uses the higher of these costs in the present analysis to obtain a more conservative estimate of potential costs.

605 reports in order to be as conservative as possible.

(1) Compliance Costs Related To Expanding the Scope of Rule 605 Reporting Entities

As a result of the proposed amendments expanding the scope of Rule 605 reporting entities, market centers and broker-dealers that were previously not required to publish Rule 605 reports would incur initial costs to develop the policies and procedures to prepare Rule 605 reports for the first time, and ongoing costs to continue to prepare them each month. Larger broker-dealers would incur initial and ongoing compliance costs as a result of the proposed amendment expanding the scope of Rule 605 reporting entities to include large broker-dealers. Similarly, the proposed amendments requiring reporting entities to prepare separate reports for their SDPs and qualified auctions would similarly result in market centers that were previously not required to prepare Rule 605 reports facing initial and ongoing compliance costs. The Commission estimates that 85 broker dealers, along with 10 SDPs and 8 qualified auctions,[963] would be required to start publishing Rule 605 reports as a result of the proposed amendments expanding the scope of Rule 605 reporting entities. Table 10 breaks down the initial and ongoing compliance costs associated these three types of reporting entities.

TABLE 10—ESTIMATED COMPLIANCE COSTS RELATED TO PROPOSED EXPANSION OF RULE 605 REPORTING ENTITIES

	Number of respondents	Initial compliance costs (million)	Ongoing compliance costs (million)
Broker-Dealers	[a] 85	[b] $3.1	[c] $3.2
SDPs	[d] 10	[b] 0.4	[c] 0.4
Qualified Auctions	[e] 8	[b] 0.3	[c] 0.3
Total	103	3.8	3.9

Table 10: Estimated Compliance Costs Related to Proposed Expansion of Rule 605 Reporting Entities. This table presents estimates of the compliance costs related to the proposed amendments to Rule 605 expanding the scope of reporting entities. Numbers are based on the estimated number of respondents and PRA costs in sections VI.C and VI.D *supra* and have been rounded to the nearest tenth of million to avoid false precision.

[a] The number of new broker-dealer respondents is estimated using data from 2021 FOCUS Report Form X–17A–5 Schedule I filings and CAT, according to the procedure described in detail in *infra* note 1008.

[b] The estimate of initial compliance costs to new respondents is based on the monetized initial burden in *supra* note 491 for new respondents, assuming that these respondents would incur 100 initial burden hours at an average hourly cost of ($37,020/100 hours) = $370.20 per respondent per hour.

[c] The estimate of ongoing compliance costs to new respondents is based on the monetized annual burden in *supra* note 492 for new respondents, assuming that these respondents would incur 8 ongoing burden hours per month (12 per year) at an average hourly cost of ($37,488/(8 hours * 12 months)) = $391.00 per respondent per hour.

[d] The Commission does not have knowledge of the number of SDPs in operation and there has chosen a conservative estimate of 10 SDPs.

[e] The Commission is not able to know the number of qualified auctions that would begin operation if the Order Competition Rule Proposal were to be adopted, and has therefore chosen a conservative estimate of 8 qualified auctions.

New reporters would face one-time, initial compliance costs to develop and implement the policies and procedures to prepare Rule 605 reports for the first time. The Commission believes that the majority of these costs would relate to the development of systems to obtain, store and process the data required for Rule 605 reports.

Larger broker-dealers that generally or exclusively route orders away would need to obtain information, such as the time of order execution and execution price, from trade confirmations provided by the execution venue. In addition, both broker-dealers and market centers would need to match their order information to historical price and depth information available via the exclusive SIPs or, following the implementation of the MDI Rules, competing consolidators,[964] to determine the NBBO (and/or best displayed) quote and size at the time of order receipt (or executability) and at the time of order execution, and use this data to calculate the required statistics.[965] These new reporters likely already retain most, if not all, of the underlying raw data necessary to generate these reports in electronic format or may obtain this information from publicly available data sources, and currently calculate similar measures to those that would be required under Rule 605 as proposed for their own internal purposes.[966] However, as a result of the proposed amendments, new reporters may have to acquire or develop data specialists and/or programmers to the extent that the information required by Rule 605 as proposed is different or more complex than the information that the new reporters typically processes, and/or acquire legal specialists to ensure compliance with the Rule.

[963] *See supra* note 483 and accompanying text for a discussion of these estimates. *See also infra* section VII.E.1.(a) for a discussion of estimating the number of larger broker-dealers (*i.e.,* broker-dealers that introduce or carry customers above a threshold number of customer accounts), that would be required to prepare execution quality reports pursuant to Rule 605, defining the customer account threshold as 100,000 customer accounts.

[964] *See supra* section VII.C.1.(d)(2).

[965] *See supra* note 196 and accompanying text.

[966] For example, broker-dealers may calculate similar measures as part of their Best Execution Committees' periodic review. *See supra* note 567 and accompanying text.

These compliance costs related to expanding the scope of Rule 605 reporting requirements may be under- or overestimated to the extent that larger broker-dealers, which are assumed to have the same compliance costs as SDPs and qualified auctions in Table 10, could experience higher or lower initial and/or ongoing costs than other types of reporting entities. For example, larger broker-dealers may incur higher initial costs to the extent that they do not currently obtain transaction information, such as the time of order execution and execution price, from trade confirmations provided by execution venues, and therefore would need to develop the procedures for doing so. Broker-dealers may also face higher ongoing costs as compared to market centers that mostly execute the shares that they receive, if collecting information for trades executed at away market centers is costlier than analyzing in-house trade information; *e.g.,* because it results in delays in processing the trade information. On the other hand, larger broker-dealers may incur lower initial costs if they are more likely than market centers to already calculate similar measures to those proposed as part of their Best Execution Committees' periodic review.[967] In addition, the Commission does not believe that there would be significant additional costs to collecting information for trades executed at away market centers, as given the monthly reporting frequency of Rule 605 reports, broker-dealers should have sufficient time to collect and process the information. Since it is not possible to determine whether larger broker-dealers would face higher or lower compliance costs than other types of market centers, the Commission is conservatively estimating that broker-dealers will incur the same compliance costs as other types of reporting entities.

Furthermore, many of the larger broker-dealers that would be newly included in the scope of reporting requirements already have experience with filing Rule 605 reports; *e.g.,* because they operate an ATS, engage in market making, or are otherwise affiliated with market centers that currently files Rule 605 reports.[968] Likewise, SDPs and qualified auctions could also have lower initial costs to the extent that they are operated by market centers that are currently required to publish Rule 605 reports. In both cases, these reporting entities could leverage this experience to prepare the reports for these additional lines of businesses more cost effectively.

(2) Compliance Costs Related to Modifications to the Coverage of Orders and Information Required by Rule 605 Reports

As a result of the proposed amendments modernizing and expanding the coverage of orders and information required by Rule 605 reports, reporting entities would incur initial compliance costs and additional ongoing compliance costs.[969] First, the estimated 236 current reporters [970] would incur initial costs to update their systems to collect and store new information and to calculate modernized and additional metrics, as well as a potential increase in ongoing costs as a result of additional data that would need to be collected and stored. Second, the proposed amendment expanding the coverage of order sizes included in Rule 605 to include orders for less than one share would result in an additional estimated 20 market centers that trade exclusively in fractional shares would be required to begin filing Rule 605 reports.[971] Third, the 16 national securities exchanges and 1 national securities association would be required to amend the NMS Plan to account for the new data fields required to be reported. Table 11 breaks down the associated initial and ongoing compliance costs.

TABLE 11—ESTIMATED COMPLIANCE COSTS RELATED TO PROPOSED AMENDMENTS MODIFYING THE INFORMATION REQUIRED BY RULE 605

	Number of respondents	Initial compliance costs (million)	Ongoing compliance costs (million)
Costs to Current Reporters	[a] 236	[b] $2.6	[c] $1.1
Costs to Market Centers Trading Fractional Shares	[d] 20	[e] 0.7	[f] 0.7
Cost to NMS Plan Participants to Update Data Fields	[g] 17	[h] 0.06	[i] 0
Total	272	3.4	1.9

Table 11: Estimated Compliance Costs Related to Proposed Amendments Modifying the Information Required by Rule 605. This table presents estimates of the compliance costs related to the proposed amendments to Rule 605 modifying the coverage of orders and information required by Rule 605 reports. Numbers are based on the estimated number of respondents and PRA costs in sections VI.C and VI.D *supra* and have been rounded to the nearest tenth of million to avoid false precision.

[967] *See supra* note 567 and accompanying text.

[968] For example, based on larger broker-dealers' answers in their Q4 2021 FOCUS Report Form X–17A–5 Schedules I and II, staff estimates that 29 out of the 85 broker-dealers identified as introducing or carrying at least 100,000 customers also engage in OTC or specialist market making activities. Specifically, 20 of these larger broker-dealers answered ''Yes'' to item 8075 of Schedule I, asking whether a respondent is registered as a specialist on a national securities exchange in equity securities, 16 of them reported non-missing gains or losses from OTC market making in exchange listed equity securities in item 3943 of Schedule II, while 7 of them reported both OTC and specialist equity market maker activities.

[969] This analysis considers the baseline against which to compare the costs that would accrue to larger broker-dealers, SDPs, and qualified auctions to be a world in which do not have to publish Rule 605 reports, and not a world in which these reporting entities are required to publish Rule 605 under current reporting requirements. As such, this section does not consider the cost of the proposed amendments modifying the coverage and information required by Rule 605 to those reporting entities that would begin publishing Rule 605 reports as a result of the proposed amendments expanding the scope of Rule 605 reporting entities.

[970] *See supra* note 483 and accompanying text for a discussion of these estimates.

[971] These market centers are identified using the CAT data described in *supra* note 644, as firm MPIDs that executed fractional shares during the sample time period that did not have a corresponding Rule 605 report. These firms are relatively large, with an average net capital of $1.66 billion, which is similar to the average net capital of all larger broker-dealers that meet the customer account threshold of at least 100,000 customer accounts ($1.59 billion). In fact, the Commission estimates that 16 of the markets centers that exclusively execute fractional shares are also larger broker-dealers that meet the customer account threshold. Under proposed Rule 605(a)(7), to the extent that a market center that exclusively executes fractional shares is also a broker-dealer that meets or exceed the customer account threshold, then this reporting entity would be required to file separate Rule 605 reports pertaining to each function. *See supra* note 166.

[a] The number of current respondents includes 16 national securities exchanges, 1 securities association, 32 ATSs (based on the number of effective Form ATS–N filings), and an estimated 93 OTC market makers and 94 exchange market makers (based on firms' responses on their 2021 FOCUS Report Form X–17A–5 Schedules I and II).

[b] The estimate of initial compliance costs to current respondents is based on the monetized initial burden in *supra* note 488 for current respondents, assuming that these respondents would incur 30 initial burden hours as a result of the amendments at an average hourly cost of ($18,510/50 hours) = $370.20 per respondent per hour.

[c] The estimate of ongoing compliance costs to current respondents is based on the monetized annual burden in *supra* note 489 for current respondents, assuming that these respondents would incur 1 additional ongoing burden hours per month (12 per year) as a result of the amendments at an average hourly cost of ($37,488/(8 hours * 12 months)) = $391.00 per respondent per hour.

[d] The Commission does not have knowledge of the number of market centers currently trading in fractional shares that would newly be required to prepare Rule 605 reports, and has therefore chosen a conservative estimate of 20 firms.

[e] The estimate of initial compliance costs to new respondents (in this case, market centers that would newly be required to prepare Rule 605 reports as a result of trading fractional shares) is based on the monetized initial burden in *supra* note 491 for new respondents, assuming that these respondents would incur 100 initial burden hours at an average hourly cost of ($37,020/100 hours) = $370.20 per respondent per hour.

[f] The estimate of ongoing compliance costs to market centers that would newly be required to prepare Rule 605 reports as a result of trading fractional shares is based on the monetized annual burden in *supra* note 492 for new respondents, assuming that these respondents would incur 8 ongoing burden hours per month (12 per year) at an average hourly cost of ($37,488/(8 hours * 12 months)) = $391.00 per respondent per hour.

[g] The number of NMS plan participants includes 16 national securities exchanges and 1 securities association.

[h] The estimate that the monetized initial burden for preparing and filing an amendment to the NMS Plan would include approximately $40,222 in aggregate internal costs per participants as well as an aggregate external cost of $16,864 resulting from outsourced legal work. *See supra* section VI.D.

[i] The Commission estimates that the costs related to updating data fields would be a one-time cost, and thus would not incur any additional ongoing compliance costs.

As a result of the proposed amendments, current Rule 605 reporters would incur initial compliance costs to update their systems to collect and store new information.[972] For example, current Rule 605 reporters would need to expand their data collection systems to include additional order types, such as stop orders, short sale orders, and orders submitted outside of regular trading hours, and would need to update their systems to reclassify certain orders, such as IOCs, riskless principal orders, and beyond-the-midpoint NMLOs, into new or different order type categories. Similarly, current reporters would need to expand their data collection systems to incorporate additional order sizes, including odd-lots, fractional orders, and larger-sized orders.

Current Rule 605 reporters would also incur initial compliance costs to update their data processing software to generate modernized and additional metrics. For example, current Rule 605 reporters would need to update their methodologies for calculating realized spread, first, to include two measures, and, second, to calculate the realized spread using 15 second and 1 minute horizons, instead of 5 minutes, and would need to develop programs (*i.e.,* code) to calculate newly required metrics, such as E/Q. Some of the metrics would involve matching trade information to data elements that are not currently required by Rule 605 but that can be obtained from public data sources, such as the best displayed price for calculating the proposed new price improvement metrics,[973] and the number of shares displayed at the NBBO for calculating the benchmark measure related to size improvement.[974] To the extent that they do not already do so, current Rule 605 reporters would also need to update their systems to record timestamps in terms of milliseconds rather than seconds as a result of the proposed amendment increasing the granularity of time-to-execution metrics.

The Commission believes that, after current Rule 605 reporters update their systems to reflect the amendments, changes to their ongoing costs would be limited, as the process for generating and publishing Rule 605 reports would largely be unchanged.[975] This is because most reporting entities currently retain most, if not all, of the underlying raw data necessary to generate the additional data elements, or are easily able to obtain this information from publicly available data sources. Furthermore, once reporting entities have developed the necessary programs to calculate the required metrics, there is limited additional effort that needs to be made beyond what current reporters are already doing, such as monitoring and debugging these statistical programs. However, the Commission recognizes that there may be some additional ongoing costs to the extent that some metrics introduced under the proposed amendments may require more data storage or more complex calculations, such that the cost of preparing monthly Rule 605 reports may increase. Therefore, the Commission has allocated addition ongoing costs to account for this possibility.[976]

As a result of the proposed amendment expanding the scope of Rule 605 to include information about orders for less than one share, the Commission estimates that some broker-dealers that exclusively execute fractional shares, and therefore do not currently file Rule 605 reports in their capacity as a market center due to fractional shares falling below the smallest order size category in current Rule 605, would be required to begin publishing Rule 605 reports. These broker-dealers would incur similar initial and ongoing costs as those discussed above for larger broker-dealers, SDPs, and qualified auctions that would be included as a result of the expanded scope of reporting entities. These compliance costs may be over- or underestimated if broker-dealers that exclusively execute fractional shares have different characteristics (*e.g.,* fewer customers) than the larger broker-dealers that would be included as a result of the expanded scope of reporting entities.

Lastly, the Commission estimates that the 16 national securities exchanges and 1 national securities association would incur a one-time initial cost to amend the NMS Plan to account for the new data fields required to be reported. The Commission estimates that this would mostly consist of legal time to develop

[972] The Commission assumes that the majority of reporting entities' initial burden hours under the PRA would be spent updating current systems as a result of the many changes to Rule 605, and thus estimate that 30 of the 50 initial burden hours estimated for current respondents and described in *supra* note 488 would be allocated to compliance with the proposed amendments modifying the information contained in Rule 605.

[973] *See supra* section IV.B.5 for a discussion of the data required to calculate this measure.

[974] *See supra* section IV.B.4.(e) for a discussion of the data required to calculate this measure.

[975] One exception is the proposed amendment requiring reporting entities to prepare summary reports summarizing key information from their Rule 605 reports. The Commission assumes that current reporters would face additional ongoing costs as a result of this amendment, and discuss these costs in *infra* section VII.D.2.(a)(3).

[976] Specifically, one additional ongoing monthly burden hour per respondent has been added to account for this possibility. *See* footnote to Table 11.

and draft the amendments to the NMS Plan.

(3) Compliance Costs Related to the Proposed Summary Execution Reports

The estimated 236 current Rule 605 reporters[977] would face additional initial and ongoing compliance cost as a result of the proposed amendment requiring reporting entities to prepare summary reports summarizing key information from their Rule 605 reports.[978] Table 12 breaks down the initial and ongoing compliance costs associated with this amendment.

TABLE 12—ESTIMATED COMPLIANCE COSTS RELATED TO PROPOSED AMENDMENT REQUIRING SUMMARY EXECUTION QUALITY REPORTS

	Number of respondents	Initial compliance costs (million)	Ongoing compliance costs (million)
Costs to Prepare Summary Execution Quality Reports	[a] 236	[b] $1.7	[c] $1.1

Table 12: Estimated Compliance Costs Related to Proposed Amendment Requiring Summary Execution Quality Reports. This table presents estimates of the compliance costs related to the proposed amendments to Rule 605 requiring Rule 605 reporting entities to prepare summary execution quality reports. Numbers are based on the estimated number of respondents and PRA costs in sections VI.C and VI.D *supra* and have been rounded to the nearest tenth of million to avoid false precision.

[a] The number of current respondents is estimated as including 16 national securities exchanges, 1 securities association, 32 ATSs (based on the number of effective Form ATS–N filings), 93 OTC market makers, and 94 exchange market makers (based on firms' responses on their 2021 FOCUS Report Form X–17A–5 Schedules I and II).

[b] The estimate of initial compliance costs to current respondents is based on the monetized initial burden in *supra* note 488 for current respondents, assuming that these respondents would incur 20 initial burden hours as a result of the amendments at an average hourly cost of ($18,510/50 hours) = $370.20 per respondent per hour.

[c] The estimate of ongoing compliance costs to current respondents is based on the monetized annual burden in *supra* note 489 for current respondents, assuming that these respondents would incur 1 additional ongoing burden hours per month (12 per year) as a result of the amendments at an average hourly cost of ($37,488/(8 hours * 12 months)) = $391.00 per respondent per hour.

The Commission estimates that these costs would be only a fraction of the overall costs to comply with Rule 605 reporting requirements, as they would contain only a small subset of the information published in the fuller Rule 605 reports. However, this may underestimate costs to the extent that these summary reports, which are intended to be human-readable and therefore have a different format (PDF file), are costlier to prepare and/or store than machine-readable data.[979]

(4) Implications of Compliance Costs for Competition

While the Commission believes that the primary competitive effect of the proposed amendments would be to increase competition between reporting entities on the basis of execution quality,[980] it is possible that the proposed amendments would have a negative impact on competition if the associated compliance costs described above prevent the entry of new reporting entities or cause some entities to leave the market.

The Commission is unable to quantify the likelihood that a either a trading venue or a brokerage firm would cease operating as a result of the compliance costs associated with the proposed amendments. While the Commission does not believe that these compliance costs are large enough such that this would be likely,[981] the Commission recognizes this possibility depends in part on whether the compliance costs associated with Rule 605 are likely to be fixed or variable. If Rule 605 compliance costs represent a fixed cost, these costs could represent a significant portion of a smaller reporting entity's revenue, such that the reporting entity could become unprofitable if subjected to these costs.[982] This could impact competition between reporting entities, for example, by causing some reporting entities to leave the market, or preventing the entry of new ones. It could also result in broker-dealers avoiding taking on more than 100,000 customers, to avoid crossing the customer account threshold such that they would need to being complying with Rule 605 reporting requirements.

On the other hand, if Rule 605 compliance costs are variable, then the scalability of compliance costs would mean that smaller reporting entities would incur lower compliance costs related to execution quality reports, which would mitigate some of these concerns. Rule 605 compliance costs could be variable, *e.g.,* because smaller reporting entities handle lower order volumes and therefore would require less data storage and less complexity when calculating the metrics required by Rule 605 as proposed.

Furthermore, even if compliance costs of preparing Rule 605 reports are fixed from the perspective of reporting entities (this would be the case, *e.g.,* if variable costs such as data storage are dominated by fixed costs such as costs for compliance and data personnel), they may be lower if reporting entities make use of third-party vendors, who can leverage economies of scale to spread fixed costs across the potentially many reporting entities that they

[977] This section does not consider the cost of the proposed amendments to those reporting entities that would begin publishing Rule 605 reports as a result of the proposed amendments expanding the scope of Rule 605 reporting entities. *See* explanation in *supra* note 969.

[978] The Commission believes that a significant portion of reporting entities' initial burden hours under the PRA would be allocated to updating current systems to prepare summary reports, which would entail both a new format and a new level of information aggregation as compared to current Rule 605, and thus estimate that 20 of the 50 initial burden hours estimated for current respondents and described in *supra* note 488 would be allocated to compliance with the proposed amendments modifying the information contained in Rule 605.

[979] For example, a single letter ''a'' results in a PDF file of 7,706 bytes vs. a TXT file of 1 byte. *See, e.g., File Size,* U.S. Pat. & Trademark Office, *available at https://www.uspto.gov/ebc/portal/infofilesize.htm.* However, the lower information content of the summary file PDFs likely results in lower file sizes despite the larger per-pixel storage requirements.

[980] *See supra* section VII.D.1.(b)(1) for a discussion of the effects of the proposed amendments on competition between reporting entities on the basis of execution quality.

[981] For example, data on broker-dealers' median monthly revenues from FOCUS Report Form X–17A–5 Schedule II show that the estimated monthly compliance cost would represent 0.09% of the monthly revenues of broker-dealers with 100,000 customers or less, and 0.003% of the monthly revenues of broker-dealers with 100,000 customers or more.

[982] The Commission does not believe that this compliance costs are large enough such that this would be likely. *See id.*

service, to prepare Rule 605 reports on their behalf. Therefore, to the extent that reporting entities make use of third-party vendors to prepare their Rule 605 reports, and these vendors charge reporting entities variable report preparation fees (*e.g.,* based on the amount of data), this could lead to data vendors charging lower prices to prepare the Rule 605 reports of smaller reporting entities. This would also reduce the burdens of compliance costs for smaller reporting entities.

However, even if some smaller reporting entities were to exit, the Commission does not believe this would significantly impact competition in either the market for brokerage services or the market for trading services, because both markets are served by a large number of competitors.[983] The Commission recognizes that smaller reporting entities may have unique business models that are not currently offered by competitors, but the Commission believes a competitor could create similar business models if demand were adequate.

(b) Other Potential Costs

The Commission has preliminarily identified costs in addition to compliance costs that some market participants may incur as a result from the proposed amendments. Many of these costs are difficult to quantify, especially as the practices of market participants are expected to evolve and may change due to the information on execution quality that is required to be reported under the proposed amendments to Rules 605. Therefore, much of the following discussion is qualitative in nature.

(1) Costs to Reporting Entities of Improvements to Execution Quality

In addition to compliance costs, the proposed amendments could result in costs to some reporting entities based on how market participants adjust their behavior in response to increased transparency and competition on the basis of execution quality.[984]

First, increased transparency and competition on the basis of execution quality, and subsequent scrutiny by customers and other market participants, might make broker-dealers less likely to route orders based on payment relationships and/or fees and rebates. While this would likely benefit customers in the form of better execution quality, if broker-dealers were to reduce the order flow sent to wholesalers who pay for it, the broker-dealers would receive less payment for such order flow and might pass the lost payments on to their customers, for example, by raising brokerage commissions or other fees. Similarly, if broker-dealers were to route orders to trading centers with lower rebates and higher fees, they might pass the reduction in rebate revenue and increase in fee costs on to their customers, for example, by raising brokerage commissions or other fees. Broker-dealers may pass lost payments or revenues along to customers in other ways as well, for example by reducing the quality of some bundled services or paying a lower interest rate on deposit accounts.

Second, increased competition on the basis of execution quality may result in costs to reporting entities to the extent that they need to update or improve their routing or execution systems in order to remain competitive. However, should these improvements result in improved execution quality for investors, any costs to a reporting entity of improvements to their routing or execution systems would be offset by benefits to other market participants, *i.e.,* investors.

It is possible that the capital expenditure associated with such an upgrade may be such that some reporting entities would no longer remain profitable. The Commission is unable to estimate the number of reporting entities that may leave the market as a result of no longer being able to compete with other reporting entities on the basis of execution quality. However, the Commission does not believe this would significantly impact competition in either the market for brokerage services or the market for trading services, because both markets are served by a large number of competitors and that, if a reporting entity were to exit for this reason, these markets would be served by more efficient firms that are better able to offer execution quality to customers in line with its industry peers.

(2) Costs for Smaller Broker-Dealers

There may be additional costs to the proposed amendments if smaller broker-dealers, who would not be subject to Rule 605 reporting requirements under the proposed amendments but may face competitive pressure to provide customers with more information and execution quality, would also face initial and ongoing costs to provide customers with execution quality reports.[985] The costs for smaller broker-dealers to prepare execution quality reports may not be the same as the costs for larger broker-dealers. Smaller-broker dealers may lack the technical expertise and compliance experience of larger broker-dealers, which would tend to lead to higher costs; however, smaller broker-dealers may also have lower costs if their lower order volume and customer account numbers lead to less complexity when calculating the metrics required in the reports.

(3) Potential for Less Transparency

The proposed amendments expanding the set of Rule 605 reporting entities to include larger broker-dealers could impose a cost on broker-dealer customers if those broker-dealers that currently voluntarily provide their customers with execution quality reports stop providing these reports, which potentially contain more or different information than what the proposed amendments require.[986] Some broker-dealer customers, especially institutional investors, currently request reports about the handling of their orders from their broker-dealers.[987] These reports may be less or more detailed and provide different and potentially less or potentially more information than those required by Rule 605 as proposed to be amended. To the extent that these reports are more detailed or provide more information than Rule 605 as proposed to be amended, and to the extent that broker-dealers would be less incentivized to provide these reports to their customers as a result of the proposed amendments,[988] broker-dealer customers may have access to less information as a result of the proposed amendments. The Commission preliminarily believes that this scenario is not very likely because customers could still request additional information or customized reports from

[983] *See supra* section VII.C.3.(a)(1) for a discussion of the structure of the market for brokerage services, and *supra* section VII.C.3.(a)(2) for a discussion of the structure of the market for trading services.

[984] *See supra* Section VII.D.1.(b)(1) for a discussion on how the proposed amendments would increase competition on the basis of execution quality. The costs to reporting entities associated with increased transparency and competition on the basis of execution quality would likely represent a transfer from these reporting entities to other market participants.

[985] *See infra* section VII.D.1.(d)(1) for a discussion of the impact of the proposed amendments on smaller broker-dealers.

[986] These reports could include, for example, public reports prepared according to the FIF Template (*see supra* note 450), or private ad hoc reports the broker-dealers prepare for their customers (*see* discussion in section VII.C.1.(c)(2) *supra*).

[987] *See supra* section VII.C.1.(c)(2) for a discussion of the practice of institutional investors requesting execution quality reports from their broker-dealers.

[988] Note that this does not apply to broker-dealer's requirements to provide customers with execution quality information about their not held orders.

their broker-dealers and broker-dealers may be incentivized to satisfy such requests, to the extent they currently do, to retain their customers.[989]

(4) Potential for Lower Execution Quality

The Commission acknowledges that, to the extent that the proposed amendments to Rule 605 fail to capture relevant dimensions of execution quality or cause market participants to focus on some dimensions of execution quality to the detriment of others, the proposed amendments may reduce execution quality along certain dimensions that may be relevant to some investors. The nature of execution quality as a multi-faceted concept has been a focus of academic papers, which have pointed out that execution quality is composed of multiple aspects or dimensions, including price and speed, among others.[990] As stated by the Commission in the Adopting Release, different investors may have different concerns and priorities related to execution of their orders.[991] If the proposed amendments tend to favor certain dimensions of execution quality while excluding or neglecting others, there is a possibility that certain investor groups may be advantaged by the proposed amendments to the disadvantage of other investor groups.

For example, average effective spreads calculated for NMLOs capture the portion of the spread that is earned by liquidity providers and paid by liquidity demanders.[992] If reporting entities compete for NMLOs by offering a wider effective spread, NMLO execution prices would improve at the expense of the execution prices of the marketable orders. There is a similar trade-off between, *e.g.,* time-to-execution and execution prices for NMLOs, as a broker-dealer seeking to improve the time-to-execution of NMLOs may favor routing those orders to an inverted venue where, as marketable orders earn a rebate, it may be more likely to attract a counterparty; this could incentivize trading venues to compete on rebates rather than on execution quality. Another example would be, if size improvement becomes a major driver of order flow, national securities exchanges may try to incentivize hidden liquidity and broker-dealers may route orders to venues with higher expected hidden orders, as size improvement measures mechanically benefit from a greater degree of hidden volume.[993] It is possible that incentivizing hidden liquidity at the cost of displayed orders may negatively impact market quality by obfuscating trading interest information and discouraging trade by making order books look thinner than they actually are.

(5) Costs To Update Best Execution Methodologies

As a result of the proposed amendments, financial service providers that are subject to best execution obligations[994] would likely reevaluate their best execution methodologies to take into account the availability of new statistics and other information that may be relevant to their decision making. This may impose a cost only to the extent that broker-dealers and/or investment advisers choose to build the required statistics into their best execution methodologies. The proposed amendments do not, however, address and therefore do not change the existing legal standards that govern financial service providers' best execution obligations.[995]

3. Economic Effects on Efficiency, Competition, and Capital Formation

(a) Efficiency

The Commission preliminarily believes the proposed amendments to Rule 605 would improve the efficiency of analyzing 605 reports, which would result in improved price efficiency. Price efficiency would improve as a result of improvements in order execution quality that would result from increased transparency and thus competition. As investors would benefit from improved execution quality as a result of the proposed amendments, these investors would also likely benefit from lower transaction costs. Transaction costs reflect the level of efficiency in the trading process, with higher transaction costs reflecting less efficiency and more friction, which limits the ability for prices to fully reflect a stock's underlying value.[996] Academic literature defines friction in financial markets to measure ''the difficulty with which an asset is traded,''[997] and as ''the price paid for immediacy.''[998] Friction makes it more costly to trade and makes investing less efficient, and it limits the ability of arbitrageurs or informed customers to push prices to their underlying values. Thus, friction makes prices less efficient. The proposed amendments to Rule 605 would improve order execution quality and reduce transaction costs. This, in turn, would reduce financial frictions and improve price efficiency.

(b) Competition

As previously discussed in the benefits section of this economic analysis, the Commission believes that the proposed amendments to Rule 605 would facilitate competition on the basis of execution quality in the markets for brokerage services and trading services.[999] The proposed amendments may also have additional effects on competition, such as increasing the extent to which Rule 605 reporting entities compete within other quality areas (such as rebates and transaction fees), and increasing competition in related markets (such as the market for TCA).

(1) Competition in Other Areas

An increase in the extent to which Rule 605 reporting entities compete on the basis of execution quality as a result of the proposed amendments may also spill over to increase incentives to compete along other lines, *i.e.,* reduce fees or increase rebates (including PFOF), or offer new products or functionalities to attract customers.

First, national securities exchanges may be incentivized to increase rebates or lower fees as a result of the proposed amendments. Exchanges compete on the basis of fees and rebates to incentivize broker-dealers to route more order flow to them.[1000] If an exchange offers the

[989] *See, e.g.,* 2018 Rule 606 Amendments Release, 83 FR 58338 (Nov. 19, 2018) at 58403, which discusses a similar potential cost and further notes that the willingness of broker-dealers to provide such customized reports to customers and the level of detail in such a report might depend on the business relationship between the broker-dealer and the customer, such as whether the customer does a large amount of business with the broker-dealer.

[990] *See, e.g.,* Robert Battalio, Brian Hatch & Robert Jennings, *All Else Equal?: A Multidimensional Analysis of Retail, Market Order Execution Quality,* 6 J. Fin. Mkt. 143 (2003); Ekkehart Boehmer, *Dimensions of execution quality: Recent evidence for US equity markets,* 78 J. Fin. Econ. 553 (2005); Emiliano S. Pagnotta & Thomas Philippon, *Competing on Speed,* 86 Econometrica 1067 (2018).

[991] *See* Adopting Release, 65 FR 75414 (Dec. 1, 2000) at 75432.

[992] *See supra* note 709 and accompanying text for a discussion of the interpretation of average effective spreads for NMLO.

[993] For example, if two exchanges have 200 shares available at the NBO price but one exchange is hiding a portion of this interest, a market order to purchase 200 shares would record size improvement on the venue with hidden liquidity but wouldn't on the other venue.

[994] *See supra* notes 565–566 and accompanying text.

[995] *See supra* note 69.

[996] *See* Hans R. Stoll, *Friction,* 55 J. Fin. 1479 (2000).

[997] *See id.*

[998] *See* Harold Demsetz, *The Cost of Transacting,* 82 Q. J. Econ. 33 (1968).

[999] *See supra* section VII.D.1.(b)(1) for a detailed discussion of the effects of the proposed amendments on competition in these markets on the basis of execution quality.

[1000] *See supra* section VII.C.3.(b)(2) for a discussion of competition between national

same execution quality as another reporting entity, an exchange may be incentivized to lower its transaction fees or raise its rebates in order to increase its competitive position in attracting more customers or order flow.[1001] To the extent that this occurs and to the extent that the resulting lower fees or higher rebates would be passed on to investors, this could be beneficial for investors.

Reporting entities may also be incentivized to innovate to offer new products in order to compete. For example, some broker-dealers may be incentivized to differentiate themselves by offer new functionalities that appeal to customers, such as the ability to trade on margin, in additional asset classes, such as options, or trade fractional shares.[1002]

(2) Competition in Related Markets

Second, the proposed amendments to Rule 605 could also have an impact on markets other than brokerage and trading services, such as the market for TCA. For example, suppose that a customer chooses to no longer purchase TCA once Rule 605 reports as proposed to be amended become available, because the customer decides that the information contained in the reports is sufficient. If fewer customers purchase TCA, this would have a negative impact on the market for third-party providers of TCA as well as third-party data vendors, because of a reduction in the demand for their services. Further, the quality of TCA provided by third parties may decrease because third-party providers of TCA might have fewer resources for the development and maintenance of their product offerings and because with fewer customers, third-party providers may have less data to use to build their models. At the same time, the quality of TCA reports may also improve if their publishers need to offer better products in order to compete with the publicly available data, and/or use the expanded information available under the proposed amendments to Rule 605 to offer new or better products.

(c) Capital Formation

The Commission preliminary believes the proposed amendments to Rule 605 may promote capital formation by improving price efficiency. As discussed above, the proposed amendments would improve order execution quality and reduce transaction costs, which would improve price efficiency. Improved price efficiency would cause firms' prices to more accurately reflect their underlying values, which may improve capital allocation and promote capital formation.

Financial frictions may have an adverse impact on capital formation. In particular, higher transaction costs may hinder customers' trading activity that would support efficient adjustment of prices and, as a result, may limit prices' ability to reflect fundamental values. Less efficient prices may result in some issuers experiencing a cost of capital that is higher than if their prices fully reflected underlying values, and in other issuers experiencing a cost of capital that is lower than if their prices accurately reflected their underlying value, as a result of the market's incomplete information about the value of the issuer. This, in turn, may limit efficient allocation of capital and capital formation.

By improving order execution quality and reducing transaction costs, the proposed amendments would reduce financial frictions and promote investor's ability to trade. This would have the effect of promoting capital formation through improved price efficiency.

E. Reasonable Alternatives

1. Reasonable Alternative Modifications to Reporting Entities

(a) Different Customer Account Thresholds for Differentiating Larger Broker-Dealers

The Commission also considered alternatives to the proposed amendment to require larger broker-dealers[1003] to prepare execution quality reports pursuant to Rule 605 and exclude broker-dealers that introduce or carry less than a threshold number of customer accounts, defining the customer account threshold as 100,000 customer accounts.[1004] Lowering this threshold would increase the total costs of the proposed amendments, as more broker-dealers would be subject to the costs of preparing Rule 605 reports; however, lowering the threshold may also be beneficial if more broker-dealer customers are able to benefit from the proposed modifications to reporting entities.[1005] On the other hand, raising the customer account threshold would lower the total costs of the proposal, but may result in fewer broker-dealer customers benefiting from the proposed modifications to reporting entities.

In order to examine the number of broker-dealers that would be subject to the collection of information obligations of Rule 605 as a result of the proposed modifications to reporting entities for different levels of the customer account threshold, it is necessary to estimate the number of customers for both carrying and introducing broker-dealers.[1006] In order to estimate the number of carrying broker-dealers' customers, the Commission used data from broker-dealers' 2021 FOCUS Report Form X–17A–5 Schedule I, which asks respondents whether they carry their own public customer accounts, along with the number of carrying broker-dealers' public customer accounts.[1007] In order to estimate the number of introducing broker-dealers' customers, the Commission used data from CAT during the calendar year 2021 on the number of unique customer accounts whose trades are associated with broker-dealers that do not identify as carrying their own public customer accounts in FOCUS Report Form X–17A–5 Schedule I.[1008] The resulting customer numbers

securities exchanges on the basis of fees and rebates.

[1001] Another possibility is that a reporting entity that offers inferior execution quality may try to compete on the basis of lower fees or higher rebates instead of increasing its execution quality. To the extent that this occurs, this may limit the extent to which competition would lead to improved execution quality for the customers of these reporting entities. However, these customers would still benefit from the lower fees or higher rebates.

[1002] *See, e.g., supra* note 642, describing how trading volume increased substantially for brokers after they introduced the use of fractional shares.

[1003] *See supra* note 1 defining the term ''larger broker-dealers.''

[1004] *See supra* note 166 and accompanying text discussing the proposed customer account threshold.

[1005] *See supra* section VII.D.1.(d)(1) for a discussion of the extent to which excluding smaller-brokers dealers (*i.e.,* those broker-dealers with customer accounts numbers below the customer account threshold) limits the benefits of the enhanced reporting requirements on competition for customer order flow.

[1006] *See supra* note 736 and accompanying text for a definition of carrying and introducing broker-dealers.

[1007] Specifically, item 8080 asks for information on ''respondent's total number of public customer accounts,'' but only broker-dealers that are carrying firms are requiring to answer this question, so information on introducing broker-dealers' customers is not included.

[1008] 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. *See supra* note 609 for more information about account types in CAT. Broker-dealers are identified according to their FDID as defined in section 1.1 of the CAT NMS Plan. Introducing broker-dealers are identified as those broker-dealers that report trades by customer accounts in the CAT dataset and do not identify as carrying their own public customer accounts in FOCUS Report Form X–17A–5 Schedule I. However, a customer account is only observed in this dataset if it actually traded during the sample

Continued

are then used to estimate the number of both carrying and introducing broker-dealers that would be subject to the reporting requirements of Rule 605 as proposed, using various different definitions of the customer account threshold. The estimated costs of the proposed amendments from the various definitions of the customer account thresholds are then calculated using the estimated initial and ongoing costs for new Rule 605 filers.[1009]

Lowering the customer account threshold may be beneficial if more broker-dealer customer accountholders are able to benefit from the enhanced reporting requirements. In order to estimate the benefits of different customer account thresholds, the Commission calculated the cumulative number of customer accounts (expressed as a percentage of all identified carrying and introducing broker-dealer customer accounts) associated with broker-dealers that would be subject to the reporting requirements of Rule 605 as proposed according to various definitions of the customer account threshold. Similarly, using estimates of the number of transactions associated with the broker-dealers' customer accounts, the Commission calculated the cumulative number of customer orders (expressed as a percentage of all customer orders belonging to carrying and introducing broker-dealer customer accounts) associated with broker-dealers that would be included under the various thresholds.[1010]

Table 13 presents the estimated number of broker-dealers (both carrying and introducing) that would be subject to Rule 605 reporting requirements according to different customer account thresholds, the resulting estimated costs of the proposed amendments, and the resulting estimated benefits in terms of the cumulative percentage of included customer accounts and orders. The table shows that increasing the customer account threshold from 100,000 to 500,000 would reduce the costs of the proposed amendments by around 47%, but would also result in lower coverage of customer transactions and accounts. In particular, only 6.2% of the customer transactions observed in 2021 would be included. Meanwhile, reducing the customer account threshold from 100,000 to 10,000 would almost triple both initial and ongoing costs. The amount of included transactions would increase by an additional 14.8 percentage points, which would be beneficial. However, the percentage of included customer accounts increases only marginally, by 1.2 percentage points, implying that the additional customer coverage resulting from the lower threshold is associated with only a small number of accounts that trade in large volumes. Such accounts are likely to belong to institutional traders, who are likely to have access to alternative information about the execution quality achieved by their broker-dealers and/or are likely to make use of not held orders that are excluded from Rule 605 reporting requirements, and would therefore be less likely to depend on Rule 605 reports for information about their broker-dealers' execution quality.[1011] Therefore, lowering the customer account threshold to include these customers may not be particularly beneficial, especially when compared to the substantial increase in cost.

Table 13—Cost-Benefit Analysis of Different Customer Account Thresholds Defining ''Larger Broker-Dealers''

period from January to December 2021. Therefore, to the extent that there are customer accounts that did not trade during this period, these accounts would be missing from our sample. In order to adjust for these missing accounts, an adjustment factor was constructed based on the assumption that, for carrying broker-dealers identified in both FOCUS and CAT, the number of customer accounts associated with the broker-dealer in CAT represents some percentage of that broker-dealer's total customer base available from FOCUS (*i.e.,* those customer accounts that actually traded during 2021). Dividing the number of accounts from CAT by the number of customer accounts from FOCUS reveals that, on average, around 29% of these broker-dealers' customer accounts traded during 2021. Observed customer numbers from CAT are then scaled up using the adjustment factor of 1/0.29 to estimate of the total number of customers for each broker-dealer (both carrying and introducing). In order to ensure that our estimate of customer account numbers is as conservative as possible, if a broker-dealer is observed in both datasets, the number of customers for that broker-dealer is taken as the higher of their customer account number reported in FOCUS and the adjusted number of customers estimated from CAT. Note that this method may underestimate the total number of customers to the extent that carrying broker-dealers identified in FOCUS introduce customers that they do not carry (*see supra* note 736 discussing hybrid carrying/introducing broker-dealers), and/or that introducing broker-dealers would have a higher or lower adjustment factor than carrying broker-dealers. This method may also underestimate or overestimate any particular broker-dealer's total number of customers to the extent that a larger or smaller portion of the broker-dealer's customer base traded during the sample period than the number implied by the adjustment factor. Lastly, this method may underestimate the number of customer accounts to the extent that some broker-dealers introduce customer accounts on an omnibus basis, which pool together the accounts of potentially multiple underlying customers but would only be recorded as a single account in CAT.

[1009] *See supra* section VI.D for a description of these costs. *See supra* notes 488 and 489 for initial and ongoing costs for existing respondents; and *supra* notes 491 and 492 for initial and ongoing costs for new respondents. This analysis assumes the same costs for both larger and smaller broker-dealers.

[1010] Specifically, the Commission used the total number of transactions associated with the broker-dealer customer accounts identified in CAT during calendar year 2021, along with the sum of broker-dealers' responses to items 8107 and 8108 from their 2021 FOCUS Report Form X–17A–5 Schedule I (''Number of respondent's public customer transactions: equity securities transactions effected on a national securities exchange'' and ''equity securities transactions effected other than on a national securities exchange''). *See Focus Report Form X–17A–5 Schedule I,* SEC, *available at https://www.sec.gov/files/formx-17a-5_schedi.pdf.* Note that some of these orders are likely to be excluded from Rule 605 reporting requirements to the extent that they belong to an order type or size group that is not subject to Rule 605. In order to ensure that our estimate of customer transactions is as conservative as possible, if a broker-dealer is observed in both datasets, the number of customer transactions for that broker-dealer is taken as the higher of the number of transactions as reported in FOCUS and the number of transactions observed in CAT.

[1011] *See supra* section VII.C.1.(c)(2) for a discussion of institutional investors' access to alternative sources of execution quality other than Rule 605 reports.

Customer Account Threshold	Number of Broker Dealers			Estimated Compliance Costs		Customer Transactions Included (%)	Customer Accounts Included (%)
	Carrying	Introducing	Total	Initial	Ongoing		
500,000	28	17	45	$ 1,665,900	$ 1,686,960	6.2%	96.3%
100,000	48	37	85	$ 3,146,700	$ 3,186,480	66.6%	98.5%
10,000	70	165	235	$ 8,699,700	$ 8,809,680	81.4%	99.7%
1,000	106	508	614	$ 22,730,280	$ 23,017,632	91.6%	100.0%
100	130	871	1001	$ 37,057,020	$ 37,525,488	91.8%	100.0%
10	140	1065	1205	$ 44,609,100	$ 45,173,040	100.0%	100.0%
1	157	1110	1267	$ 46,904,340	$ 47,497,296	100.0%	100.0%

Table 13: Cost-Benefit Analysis of Different Customer Account Thresholds Defining "Larger Broker-Dealers". This table presents the estimated number of broker-dealers that would be subject to Rule 605 reporting requirements according to different definitions of the customer account threshold. Customer account numbers and transaction numbers for carrying broker-dealers are estimated from 2021 FOCUS Report Form X-17A-5 Schedule I and customer account numbers and transactions numbers for introducing broker-dealers are estimated using data from CAT for calendar year 2021 (see supra note 1008 and 1010 for methodology). Costs are estimated using the per-respondent costs from section VI.D (see supra note 1009 for a description of these costs).

An indirect cost of requiring these smaller broker-dealers to publish Rule 605 reports is an increased risk of information leakage. To the extent that a broker-dealer serves multiple institutional investors and/or these institutional investors exclusively use not held orders, it would be difficult to identify the orders of a particular customer in the proposed reports. However, a smaller broker-dealer may have only a few institutional investor customers that represents the majority of its business and this may be known to other market participants. In this case, it may be possible to learn from Rule 605 reports some information about the customer's order flow that is handled by the specific broker-dealer. This information would only pertain to historical order flow and would only include a possibly limited subset of the customer's orders that are held orders, but could nevertheless provide information about the general characteristics of the customer's order flow, which may be useful to other market participants. Such a potential outcome could put smaller broker-dealers (that is, those with a small set of customers or handling a relatively small number of institutional orders) at a competitive disadvantage relative to larger broker-dealers, as institutional investors might avoid using smaller broker-dealers to avoid possible disclosure that could be traced back to the customer.

(b) Require All Broker-Dealers To Prepare Rule 605 Reports

Another alternative to the proposed amendment to require larger broker-dealers to prepare execution quality reports pursuant to Rule 605 is to require all broker-dealers to prepare such reports, excluding broker-dealers with de minimis order flow.[1012]

Expanding reporting requirements to all broker-dealers, subject to a de minimis threshold, would greatly increase the scope of the proposed amendments, as there were 3,498 registered broker-dealers as of Q2 2022.[1013] However, only around a third (specifically, 1,267) of these broker-dealers introduced or carried at least one individual and/or institutional investor in the market for NMS stocks within the sample time period.[1014] The Commission is mindful of the additional costs that broad expansion of the rule to all broker-dealers would entail, relative to the likely limited benefits of expanding reporting requirements to a substantial number of broker-dealers that do not directly handle, and thus have less discretion over the execution quality of, individual and institutional investors' orders. Therefore, the Commission believes that the increase in cost that would accompany a requirement for all broker-dealers to prepare Rule 605 reports, subject to a de minimis threshold, would not be justified by the corresponding benefit, and that limiting reporting obligations to broker-dealers that handle customer orders would focus the associated implementation costs on those broker-dealers for which the availability of more specific execution quality statistics would provide a greater benefit.

(c) Defining the Threshold for Differentiating Larger Broker-Dealers Using Number of Customer Transactions Rather Than Number of Customer Accounts

The Commission also considered defining the threshold for differentiating larger broker-dealers using number of customer transactions rather than number of customer accounts. An approach requiring that broker-dealers handling above a threshold level of customer transactions publish Rule 605 reports would likely capture an overall larger number of customer orders. However, it would also be subject to a

[1012] This alternative was suggested by EMSAC; *see supra* notes 104–106; 171 and accompanying text.

[1013] *See supra* note 735 and corresponding discussion.

[1014] *See* analysis in *supra* Table 13 for estimated number of broker-dealers that introduce or carry at least one customer account.

number of issues that would limit the benefits of this approach.

First, this approach would likely exclude from reporting requirements broker-dealers that have a large number of relatively inactive customer accounts, and include broker-dealers that have a small number of accounts associated with large amounts of trading volume. While the former are likely to be accounts belonging to individual investors, the latter are very likely to be institutional accounts. Institutional investors are likely to have access to alternative information about the execution quality achieved by their broker-dealers and/or are likely to make use of not held orders that are excluded from Rule 605 reporting requirements, and would therefore be less likely to depend on Rule 605 reports for information about their broker-dealers' execution quality.[1015] Meanwhile, individual investors have few alternatives other than Rule 605 for information about the execution quality achieved by their broker-dealers.[1016] Therefore, while expanding overall coverage, defining the threshold using the number of customer transactions would be less likely to target the types of orders that may be most useful for consumers of Rule 605 reports.

Secondly, defining the threshold using the number of customer transactions may result in a less stable classification of broker-dealers into those that are and are not subject to Rule 605 requirements, as there is likely to be more month-to-month variation in transaction numbers resulting from changes in market conditions, as compared to number of customer accounts.[1017] This could potentially be disruptive to broker-dealers to have to coordinate compliance with the Rule during some periods but not others and interfere with customers' or market participants' ability to look at a broker-dealer's execution quality over time by analyzing historical data. Furthermore, the dependence of transaction volumes on market conditions may result in broker-dealers being newly defined as ''larger broker-dealers'' subject to reporting requirements, even though their size relative to other broker-dealers did not change. For example, a period of sustained market volatility resulting in overall increases in market activity levels may trigger the need for many or even most broker-dealers to file Rule 605 reports, even if the broker-dealer's relative portion of order flow (as a percentage of total broker-dealer customer order flow) did not change.[1018] This would increase the total compliance costs associated with the proposed amendments.

Lastly, the number of customer accounts is likely less costly for broker-dealers to calculate and track compared to the number of transactions associated with customer accounts. Given that only 41.1% of customer-carrying broker-dealers report the actual number of their customer transactions (rather than an estimated number) on their FOCUS Report Form X–17A–5 Schedule I,[1019] the extent to which broker-dealers currently are able or choose to track the number of transactions associated with their customer accounts is unclear.

2. Reasonable Alternative Modifications to Scope of Covered Orders

(a) Explicitly Include ISO Orders With Limit Prices Inferior to the NBBO

Currently, marketable Intermarket Sweep Orders (''ISOs'') with a limit price inferior to the NBBO, *i.e.,* an ISO with a limit price less than the national best bid for sell orders or higher than the national best offer for buy orders, may be viewed as being subject to special handling, which would exclude them from Rule 605 reports.[1020] One alternative could be to explicitly include these orders within the scope of covered orders, either aggregated with other orders types or as a separate order type category.

ISOs make up a large percentage of on-exchange trade volume; one academic working paper found that, between January 2019 and April 2021, ISOs accounted for 48% of on-exchange trade volume.[1021] In order to estimate the volume of ISOs that are excluded from Rule 605 reporting requirements as a result of the exclusion of ISOs with inferior limit prices, an analysis was performed using data on ISO marketable limit orders from the Tick Size Pilot B.II Market and Marketable Limit Order dataset.[1022] Table 14 shows that ISO orders with limit prices inferior to the NBBO make up 4.9% of ISO buy orders (6.3% of buy share volume), and 4.7% of ISO sell orders (9.0% of ISO sell volume). Therefore, it could be the case that these orders make up a small but non-negligible percent of order flow.[1023]

TABLE 14—MARKETABLE INTERMARKET SWEEP ORDERS BY PRICE RELATIVE TO NBBO, MARCH 2019

	ISO buy orders (percent)	ISO sell orders (percent)
Percent of Orders:		
Price Equal to the NBBO	95.1	95.2
Price Worse Than NBBO	4.9	4.7
Price Better Than NBBO	0.05	0.06
Percent of Share Volume:		
Price Equal to the NBBO	93.5	90.1
Price Worse Than NBBO	6.3	9.0

[1015] *See* section VII.C.1.(c)(2) for a discussion of institutional investors' access to alternative sources of execution quality other than Rule 605 reports.

[1016] *See* section VII.C.1.(c)(1) for a discussion of individual investors' usage of Rule 605 reports.

[1017] Note that this possibility is somewhat limited by the proposal that a broker or dealer that equals or exceeds the customer account threshold would be required to provide reports for at least three calendar months. *See supra* note 183 and corresponding discussion.

[1018] Note that this possibility would be somewhat limited by the proposal to only require broker-dealers to publish Rule 605 reports after a three-month initial grace period. *See supra* note 186 and corresponding discussion.

[1019] *See supra* note 168 for a description of FOCUS Report Form X–17A–5 Schedule I.

[1020] *See supra* notes 36–37, discussing the exclusion of orders for which the customer requests special handling from the definition of ''covered orders''. *See also* 2013 FAQs, answer to Question 1.

[1021] *See* Ariel Lohr, *Sweep Orders and the Costs of Market Fragmentation* (Sept. 18, 2021), *available at https://ssrn.com/abstract=3926296* (retrieved from SSRN Elsevier database).

[1022] *See supra* note 723 for dataset description. For the analysis of ISO orders, the Commission limited this analysis to a randomly selected sample of 100 stocks and for the time-period of March 2019.

[1023] As the Tick Size Pilot covered only small-cap stocks (*i.e.,* NMS common stocks that have a market capitalization of $3 billion or less, a closing price of at least $2.00, and a consolidated average daily volume of one million shares or less), ISO volumes and properties may be different for mid- or large-cap stocks. Furthermore, as the Tick Size Pilot data is based on self-reported data by trading centers, there is the possibility that the data may be subject to certain errors or omissions.

TABLE 14—MARKETABLE INTERMARKET SWEEP ORDERS BY PRICE RELATIVE TO NBBO, MARCH 2019—Continued

	ISO buy orders (percent)	ISO sell orders (percent)
Price Better Than NBBO	0.2	0.9

Table 14: Marketable Intermarket Sweep Orders by Price Relative to NBBO, March 2019. This table shows the percentage of ISO marketable limit orders with limit prices inferior to the NBBO, equal to the NBBO, and better than the NBBO, using a randomly selected sample of 100 stocks from the Tick Size Pilot B.II Market and Marketable Limit Order dataset and for the time period of March 2019. *See supra* note 723 for dataset description. The numbers reported here, in particular those related to the NBBO, may change once the amendments in the MDI Adopting Release are implemented. *See supra* note 613 and section VII.C.1.(d)(2).

However, there are questions as to whether ISOs with inferior limit prices would be comparable to other marketable limit orders. When the limit price of an ISO is inferior to the NBBO at time of order receipt, the customer is effectively instructing the trading center that it can execute the order at a price inferior to the NBBO. If the order executes, any adverse effects that this inferior limit price has on the order's execution quality metrics (*e.g.,* a negative price improvement, or a higher effective spread) would be a result of the customer's instructions, rather than the market center or broker-dealer's discretion. As a result, these orders are likely to skew execution quality metrics downwards if included with other order types, which would harm market participants' ability to use these metrics to accurately compare reporting entities.

One alternative could be to explicitly include ISOs with inferior limit prices as a separate order type category in Rule 605 reports. However, the instruction that a market center should execute an ISO order at a price inferior to the NBBO, even when other market centers are displaying liquidity at better prices, limits broker-dealers' discretion over the execution price of these orders. Thus, market participants may only benefit from this information to the extent that market centers or broker-dealers still have some discretion over some dimension of the order's execution quality such that this information would be useful in comparing metrics across reporting entities. For example, the willingness of traders to accept prices worse than the NBBO could help illuminate the premium paid by traders to quickly trade in a fragmented trading environment, which could differ across market centers.

(b) Exclude Orders That Are Cancelled Quickly After Submission

Limit orders that are canceled within a very short amount of time after submission are likely driven by trading strategies (for example, high frequency trading [1024] and ''pinging'') that are not intended to provide liquidity, and therefore may have limited information about the execution quality of a particular market center. Excluding quickly cancelled orders from the definition of covered orders may allow fill rates (*i.e.,* number of shares executed at or away from the market center, divided by number of covered shares) to better capture the execution probability of resting orders that are given a minimum opportunity to be executed, leading to a more meaningful ranking of Rule 605 reporting entities. At the same time, excluding cancelled orders also may entail losing important information if these cancellations capture information about orders that did not or could not receive a fill, rather than trading strategies.

In order to examine how the presence of quickly cancelled orders may impact fill rates and subsequently impact the ranking of market centers, the Commission first examined data on cancellation and execution times of executable NMLOs from MIDAS during the month of March 2022.[1025] Figure 16 plots the conditional distribution of cancellation and execution times,[1026] and shows that cancellation times tend to be shorter than execution times: while the largest percentage (29.8%) of cancelled executable NMLOs are cancelled between 1 and 100 milliseconds after submission, the largest percentage (44.8%) of executable NMLOs that received execution are not executed until between 1 and 30 seconds after submission. In fact, while 75% of cancelled orders are cancelled in less than 1 second, only 41.1% of executions happen within the same time frame. This imbalance implies that many orders may be cancelled before they are given a reasonable opportunity to execute.

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Figure 16: Distribution of Execution and Cancellation Times for Executable NMLOs, March 2022

[1024] The Concept Release on Equity Market Structure states that ''the submission of numerous orders that are cancelled shortly after submission'' is a primary characteristic of high-frequency traders. *See* 75 FR 3594 (Jan. 21, 2010) at 3606.

[1025] *See supra* note 634 for data description. Note that this analysis doesn't include IOC NMLOs, which are not captured in MIDAS metrics. As discussed in *supra* section VII.C.2.(c)(7), these orders may also contribute to low fill rates in Rule 605 reports.

[1026] Note that the conditional distribution examines the percentage of cancelled (executed) orders that are cancelled (executed) within the defined time thresholds, and not the percentage of all orders that are cancelled or executed within the defined thresholds. Therefore, the cancellation (execution) percentages plotted in the Figure should sum up to 100%.

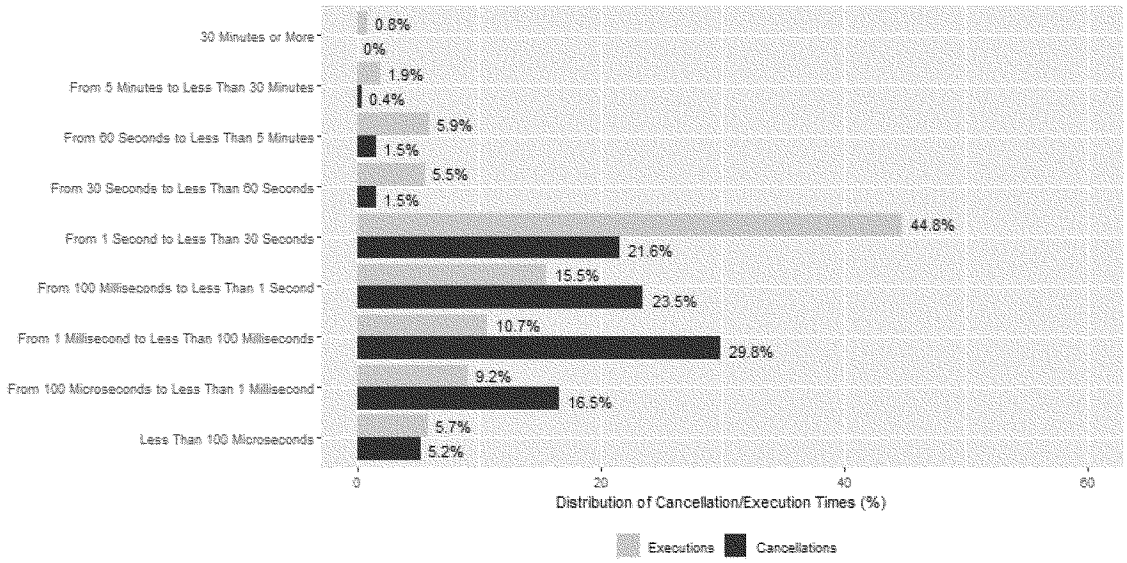

Figure 16: Distribution of Execution and Cancellation Times for Executable NMLOs, March 2022. This figure plots the distribution of execution and cancellation times across various time categories, using data from MIDAS. See supra note 634 for data description.

Therefore, it may be the case that excluding orders cancelled below some minimum threshold may lead to more informative fill rates. However, one question might be how to determine this threshold. For example, if the intent is to exclude cancellations that are part of high-frequency trading strategies such as pinging, it may be useful to keep in mind that estimates of human reaction time range from between one second and several hundred milliseconds, setting an upper bound for what might be considered high-frequency trading.[1027] Meanwhile, one recent academic paper found that high frequency trading strategies operate in approximately 5 to 10 microseconds.[1028] This would imply that a useful range for determining an appropriate threshold might be between approximately a few microseconds and one second. Figure 17 plots the fill rates of executable NMLOs that result from excluding orders that are cancelled below a variety of minimum time thresholds, showing that fill rates increase and approach 100% as more and more cancelled orders are excluded from the calculation of the fill rate. Importantly, fill rates do not change much when orders cancelled in less than 100 microseconds, only increasing by 0.2%. Fill rates increase substantially when orders cancelled in less than 1 second are excluded, but still remain on the lower side at 11.5%. This implies that the impact of excluding quickly cancelled orders on fill rates may be limited.[1029]

Figure 17: Effect of Excluding Quickly Cancelled Orders on Fill Rates for Executable NMLOs, March 2022

[1027] *See, e.g.,* Neil Johnson, Guannan Zhao, Eric Hunsader, Hong Qi, Nicholas Johnson, Jing Meng & Brian Tivnan, *Abrupt Rise of New Machine Ecology Beyond Human Response Tim*e, 3 Sci. Reps. 1 (2013); Albert Menkveld & Marius A. Zoican, *Need for Speed? Exchange Latency and Liquidity,* Rev. Fin. Stud. 1188 (2017).

[1028] *See* Matteo Aquilina, Eric Budis & Peter O'Neill, *Quantifying the High-Frequency Trading ''Arms Race,* 137 Q. J. Econ. 493 (2022).

[1029] Note that this sample contains a mixture of stocks in terms of share price and market capitalization, and these numbers are likely to look different for individual stocks according to their market capitalization and liquidity characteristics.

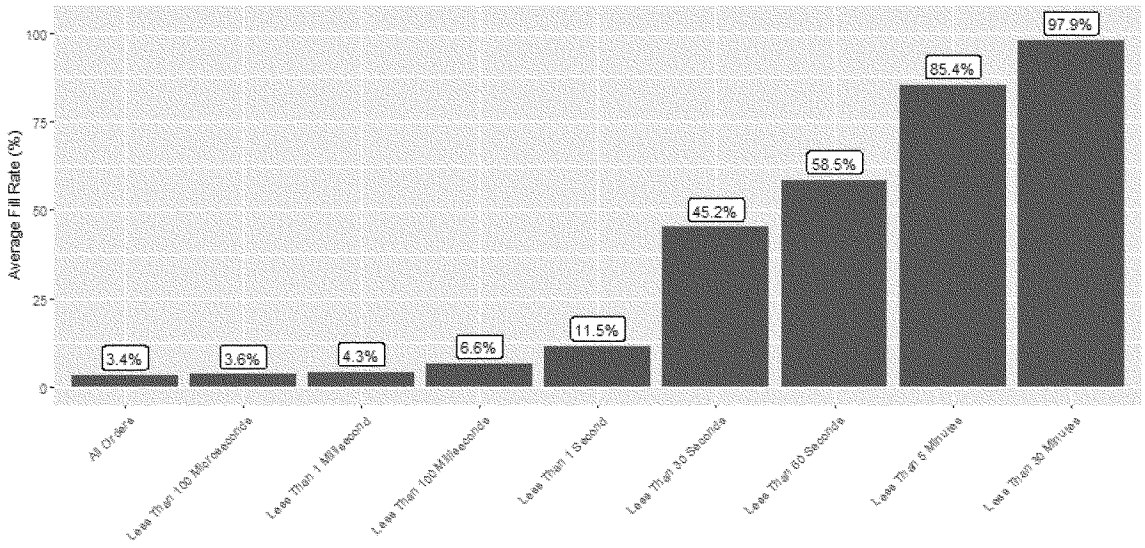

Figure 17: Effect of Excluding Quickly Cancelled Orders on Fill Rates for Executable NMLOs, March 2022. This figure plots the fill rates of executable NMLOs that result from excluding orders that are cancelled below a variety of minimum time thresholds using data from MIDAS. See supra note 634 for data description.

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The benefit of excluding quickly cancelled orders is also likely to be limited if excluding these orders systemically increases fill rates across all reporting entities and does not necessarily lead to a change in ranking between reporting entities. To explore this possibility, the Commission limited the sample to the five largest market centers in terms of execution volume, to examine how the rankings between these market centers changes in terms of their fill rates for executable NMLOs resulting from changes to the threshold below which to exclude cancelled orders. Then it examined changes to their fill rate rankings for executable NMLOs as the threshold below which to exclude cancelled orders increased. The Commission found that market centers' rankings did not change until cancellations below one second were excluded, when the market centers ranked first and third switched places. As for reasons described above one second represents a maximum bound on a reasonable threshold for excluding cancellations, this again implies that the benefits of excluding quickly cancelled orders on fill rates may be limited.

(c) Include NMLOs Submitted Outside of Regular Trading Hours as a Separate Order Category

The Commission is proposing to include NMLOs submitted outside of regular trading hours if they become executable during regular trading hours into the scope of covered orders. If NMLO orders submitted outside of regular trading hours have characteristics that are fundamentally different from other types of orders and have sufficient volume such that their inclusion along with other orders may skew execution quality statistics, it may be useful to include these orders are a separate order type category in Rule 605 reports. Pre-open orders likely have characteristics that differ from orders submitted during regular hours.[1030] However, these pre-open orders make up only a very small percentage of order volume, representing only around 4.8% of the volume of orders submitted during a single ten-minute period of the trading day. Therefore, it is unlikely that the inclusion of these orders along with other order types would significantly skew execution quality statistics, and including them as a separate order type category would likely only increase the complexity and size of Rule 605 report files.

3. Reasonable Alternative Modifications to Required Information

(a) Reasonable Alternative Order Size Categories

(1) Defining Order Sizes Based on Dollar Volume Categories Rather Than Number of Round Lots

Instead of redefining order size categories according to number of round lots, one alternative would be to redefine categories based on the dollar value of the order. This approach has several advantages. First, similarly to defining categories based on numbers of round lots as in the current proposed amendments, notional size buckets based on orders' dollar values may make it easier to compare execution quality metrics across market centers that may trade in differently priced stocks. Pre-controlling for the stock price would thus eliminate the need for users of Rule 605 to go through the extra step of collecting and controlling for stock price information before being able to meaningful compare market centers using Rule 605 data. Secondly, unlike categories based on numbers of round lots, which according to the MDI Rules are based on the previous month's trading price,[1031] categories based on dollar volumes incorporate information about changing stock prices in real time, thereby better grouping together similarly sized orders, *e.g.,* stocks that experience a large price increase or drop within a single month.

On the other hand, while remaining in the spirit of distinguishing between ''small'' and ''large'' orders, defining order size buckets according to dollar values would no longer produce a meaningful distinction between round lot and odd-lot orders according to the

[1030] *See supra* section VII.D.1.(a)(2)(a) for an analysis showing that orders submitted pre-open tend to be larger and further away from the midpoint as compared to orders submitted during regular opening hours.

[1031] *See supra* note 265 and accompanying text.

new definitions under the MDI Rules, so it would not be possible to distinguish orders that may not be at quotes protected under Rule 611. Therefore, it is not clear that defining order size categories in terms of dollar values is superior to defining them by number of round lots as is currently proposed.

(b) Reasonable Alternative Time-to-Execution Statistics

(1) Increase the Granularity of Time-to-Execution Buckets

One alternative to eliminating time-to-execution buckets would be to redefine the time-to-executions to have a granularity that better suits the speed of modern markets. Time-to-executions for both marketable and non-marketable order types calculated using the Tick Size Pilot B.II dataset was analyzed,[1032] and Figure 12 shows execution speeds of market and marketable limit orders, along with the three categories of non-marketable limit orders currently required in Rule 605 (inside-the-quote, at-the-quote, and near-the-quote).

The figure shows that, for market and marketable limit orders, time-to-execution speeds are mostly bunched up at the fastest end of their time buckets, and the longer time-to-execution buckets are left virtually empty. However, the figure shows a very different picture for NMLOs, in particular for at-the-quote and near-the-quote limit orders. In contrast to market and marketable limit orders, a vast majority of these orders are executed in over one second.

While the proposed amendment to include only NMLOs that eventually touch the NBBO could cause average execution speeds to differ between Rule 605 and that of the Tick Size Pilot, *e.g.,* by excluding some NMLOs with very long execution times, virtually all of the orders in the at-the-quote category would by definition be included within the proposed new scope of executable NMLOs. These orders also have a very different distribution of time-to-executions compared to that of market and marketable limit orders. Therefore, the granularity of time-to-execution that would be granular enough to usefully capture the execution speeds of market and marketable limit orders would likely be too granular to capture the execution speeds of non-marketable limit orders. One solution might be to define two different sets of time-to-execution buckets: one for market/marketable orders, and one for non-marketable limit orders. However, this would likely increase the complexity of reporting requirements.

(c) Reasonable Alternative Spread Measures

(1) Use Different Clock Time Horizons To Calculate Realized Spread

The Commission is proposing to require the realized spread to be calculated at both 15 seconds and one minute time horizons. The Commission also considered alternative time horizons. An ideal measurement horizon would be one that aligns with the amount of time an average liquidity provider holds onto the inventory positions established from providing liquidity.[1033] Selecting an appropriate time horizon to calculate the realized spread is important, as realized spreads vary significantly as the time horizon is changed, as well as according to stock characteristics, such as size.[1034]

An analysis of variations in realized spreads calculated over time horizons ranging from 1 second to 5 minutes, as well as how they differ based on stock size, generally showed that, by the 1-minute horizon, realized spreads captured the majority of the information contained in realized spreads for all stocks, and a substantial majority for the two groups of larger stocks.[1035] However, while increasing the time horizon from 1 minute to 5 minutes has only a minimal impact on realized spreads for larger stocks, for the two smaller-stock groups, a sizeable proportion of the overall decline (37%) does not occur until the 5-minute horizon. Therefore, it may be that retaining a 5-minute horizon, in addition to the proposed 1-minute and 15-second horizon, would capture additional information about realized spreads, particular for the smallest stocks. However, requiring an additional specification of realized spreads would entail adding another data item, which would also increase the complexity of Rule 605 reports and thereby add to the costs that market participants face when collecting, interpreting, and evaluating Rule 605 reports.[1036] Given that more than 50% of the variation in realized spreads is already captured by the 1-minute horizon, the Commission does not believe that this additional cost would be justified by the benefit of requiring an additional specification for realized spreads.

(2) Use Trade Time Horizons To Calculate Realized Spread

The Commission also considered whether the time horizon used to calculate realized spreads should be measured in terms of ''trade time,'' rather than ''clock time.'' An ideal measurement horizon for realized spreads would be one that aligns with the amount of time an average liquidity provider holds onto the inventory positions established from providing liquidity. As discussed above, one would expect that this horizon varies according to characteristics that impact liquidity providers' ability to turn over their positions, including stock characteristics such as size as described above; however, this time horizon also varies over time, as overall market conditions change. The use of a fixed time horizon could therefore make it so that the ability of realized spread measures to capture information about adverse selection varies over time.

Instead of setting a fixed ''clock time'' horizon, volume or ''trade time'' measures changes between the ''the initial trade to the *i*th trade thereafter,'' [1037] and therefore allows for a time horizon that is flexible to different levels across stocks, and also over different time periods. In other words, while prices may update under liquid conditions in a few seconds or less, during very illiquid conditions several minutes may go by without a trade. Measuring time in terms of number of trades allow for the horizon to match these different speed ''regimes'' and may result in realized spread calculations that are more consistently relevant.[1038]

However, the Commission is mindful of the additional computational resources that would be required if trade time were required to calculate realized spreads, as it would require reporting entities to match their execution information both to information on the NBBO, as would be necessary under the proposed clock time horizons, but additionally historical trade information from the exclusive SIPs.[1039] More computationally intensive metrics would likely increase reporting entities' compliance costs. Therefore, the Commission believes that the proposed amendment to include multiple fixed time horizons (15 seconds and 1 minute) would allow for sufficient

[1032] *See supra* note 723 for dataset description.

[1033] *See supra* section IV.B.4.

[1034] *See supra* Figure 1.

[1035] *See supra* Table 1.

[1036] *See supra* section VII.C.2.(d) discussing search costs related to Rule 605 reports.

[1037] *See* Conrad and Wahal at 241.

[1038] For this reason, some academic studies use of trade time instead of clock time when calculating metrics; *see, e.g.,* David Easley, Marcos M. Lopez De Prado & Maureen O'Hara, *Flow Toxicity and Liquidity in a High-Frequency World,* 25 Rev. Fin. Stud. 1457 (2012).

[1039] *See supra* note 195.

flexibility in capturing realized spread information for stocks and/or time periods with different liquidity characteristics without increasing the computational resources required to calculate this measure.

(3) Use Weighted Midpoint To Calculate Effective and Realized Spread

Rule 600(b)(9) currently defines effective spreads as, for buy orders, double the amount of difference between the execution price and the midpoint of the national best bid and national best offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the national best bid and national best offer at the time of order receipt and the execution price.[1040] The Commission is further proposing to add a definition of the average percentage effective spread, which would be equal to the share-weighted average of effective spreads, divided by the midpoint.[1041] However, an academic study [1042] found that measuring the effective spread relative to the midpoint overestimates effective spreads by an average of 13%–18%, and that the bias can vary across stocks, trading venues, and investor groups. The paper instead suggests measuring effective spreads relative to a weighted midpoint, which factors in the depth available at the best bid and ask price, in order to reduce this bias.[1043]

The presence of bias in effective spreads in Rule 605 reports would impact market participants' ability to use this metric to make comparisons across reporting entities, particularly if the bias leads to a systematic over- or under-estimation of spreads for a particular entity or group of entities. However, there are benefits and costs to the use of the midpoint compared to the weighted midpoint for calculating effective spreads. On the one hand, the midpoint requires only data on the best available bid and ask price. Calculating the weighted midpoint on the other hand would require that reporting entities additionally collect data on the depth available at the NBBO.[1044] Furthermore, the midpoint may be easier to compute and interpret, as it is more familiar to market participants than the weighted midpoint.

(d) Reasonable Alternative Size Improvement Measures

(1) Allow Market Centers To Voluntarily Report ''Real Price Improvement'' Measures

The Commission considered alternative measures of size improvement, including a measure of ''real price improvement'' (''RPI''), which the petitioner suggested would take into account the depth available at market quotes.[1045] RPI is calculated as the signed difference between the transaction price and a reference price calculated as the value-weighted average price that the trader would have gotten from walking a consolidated limit order book consisting of displayed liquidity from all national securities exchanges, taking into account both odd-lots and depth available at prices outside of the NBBO. In other words, it calculates how much money a trader saved by the market center executing their trade at a particular price, rather than having their order walk the consolidated limit order book.

As the calculation of RPI takes into account the complete set of information related to the consolidated depth of book, RPI may be a more informative measure of size improvement than a measure that can be calculated using the benchmark metric [1046] proposed to be required by Rule 605, such as the size enhancement rate,[1047] which only includes information about depth at the best displayed prices. However, as the complete set of consolidated depth of book information is not available from public data sources, the RPI would require reporting entities to subscribe to all national securities exchanges' proprietary depth-of-book data feeds, which would entail a significant cost for those reporting entities that do not already subscribe to these feeds.[1048] This could make it so the benefits to market participants from having access to a potentially more accurate measure of size improvement are not justified by these additional costs to reporting entities of needing to subscribe to national securities exchanges' proprietary data feeds.

In order to compare the extent to which RPI and the size enhancement rate contain similar information about size improvement, staff used data from the Tick Size Pilot B.II Market and Marketable Limit Order dataset [1049] to calculate the average correlation [1050] between these two measures. Similar to the analysis in Table 8 examining whether price improvement and size improvement measures contain different information, staff also calculated the average correlation between RPI, price improvement and effective spreads, to confirm that this measure of size improvement contains different information than the metrics that are already included in Rule 605 reporting requirements. As in Table 8, the analysis is performed separately for national securities exchanges and off-exchange market centers.

Results are presented in Table 15 and show that RPI and price improvement are relatively strongly correlated for both national securities exchanges and off-exchange market centers, implying that these measures contain some (but not all) of the same information about execution quality. Similarly, there is moderate correlation between RPI and effective spreads, implying that these measures are somewhat overlapping in terms of their information about execution quality for both types of market centers. This confirms the results from Table 8 that measures of size improvement contain information that is currently missing from Rule 605 reports. In terms of the extent to which RPI and the size enhancement rate contain the same information about size improvement, the Commission found that there is a moderate level of correlation between RPI and the size enhancement rate (18.4% for exchanges and 22.7% for off-exchange market centers).

[1040] *See* 17 CFR 242.600(b)(8).

[1041] *See* proposed Rule 600(b)(11).

[1042] *See* Björn Hagströme, *Bias in the Effective Bid-Ask Spread,* 142 J. Fin. Econ. 314 (2021).

[1043] *See supra* note 419 for a precise definition of the weighted midpoint.

[1044] Note that this may not be a significant cost, as reporting entities are required to collect information on NBBO depth for computing the size improvement benchmark measure under the proposed amendments. *See supra* section IV.B.4.(e).

[1045] *See supra* note 411 and accompanying text.

[1046] *See supra* section IV.B.4.(e) for more information about this benchmark.

[1047] *See supra* note 884 for information about how the size enhancement rate is constructed.

[1048] In a white paper, one market center estimated its costs related to subscribing to depth of book data feeds for 11 national securities exchanges to be between $51,480 and $226,320 per exchange per year. *See The Cost of Exchange Services: Disclosing the Cost of Offering Market Data and Connectivity as a National Securities Exchange,* IEX (Jan. 2019), *available at https://iextrading.com/docs/T The%20Cost%20Tof%20Exchange%20Services.T pdf.*

[1049] *See supra* note 882 for dataset description. This analysis uses data from prior to the implementation of the MDI Rules and the specific numbers may be different following the implementation of the MDI Rules. However, it is unclear whether or how these effects would impact the correlations between these measures documents in this analysis. *See supra* note 882 and section VII.C.1.(d)(2).

[1050] *See supra* note 883 for a description of how average correlations are calculated.

TABLE 15—AVERAGE CORRELATION BETWEEN MEASURES OF PRICE AND SIZE IMPROVEMENT

Correlations	National securities exchanges (percent)	Off-exchange market centers (percent)
RPI and Price Improvement	42.1	37.2
RPI and Effective Spreads	17.1	25.8
RPI and Size Enhancement Rate	18.4	22.7

Table 15: Average Correlation between Measures of Price and Size Improvement. This table presents correlations between three measures of price improvement and size improvement: price improvement, calculated as the signed difference between the execution price and the NBBO, the effective spread, calculated as twice the signed difference between the execution price and the NBBO midpoint, and the size enhancement rate, calculated as the size improvement share count divided by the benchmark share count (*see supra* note 884 for a detailed description of this measure). *See supra* note 882 for dataset description and *supra* note 883 for methodology. This analysis uses data from prior to the implementation of the MDI Rules and specific numbers may be different following the implementation of the MDI Rules. *See supra* note 882 and section VII.C.1.(d)(2).

Given that correlation levels between these two measures are only moderate, the implication is that RPI does contain information that is not contained by the proposed benchmark metric. However, even though RPI may be a more informative measure of size improvement, it is not clear that the cost of requiring reporting entities to have access to full set of consolidated depth information would justify the benefit to market participants of having access to this additional information about size improvement. If not, the proposed amendment to include the benchmark consolidated reference quote size, capped at the size of the order, in Rule 605 reporting requirements would still be a reasonable proxy for size improvement.

One alternative might be to add a field to Rule 605 reports for real PI, but allow reporting entities to voluntarily report this measure if they subscribe to the full set of proprietary data feeds and thus have access to the complete set of consolidated depth information. Note that the requirements would need to specify that only firms that subscribe to the full set of proprietary data feeds could report this measure, as an incomplete set of information about availability liquidity at market prices would systematically overstate any size improvement measure.

4. Reasonable Alternative Modifications to Accessibility

(a) Require a System for the Centralized Posting of Rule 605 Reports

Instead of or in addition to having market centers and larger broker-dealers post Rule 605 reports to their websites, the Commission could require Rule 605 reports be submitted to a centralized electronic system, which would then make these reports available to market participants. Compared to the proposed amendments, requiring the creation of a centralized electronic system for Rule 605 reports would promote even greater transparency by better enabling market participants to access and evaluate the reports of multiple (or even the complete set of) reporting entities for the purposes of comparison. Market participants may currently face search costs when collecting existing Rule 605 reports in order to compare execution quality across reporting entities, in particular when collecting Rule 605 reports for multiple entities and across longer time periods.[1051] A centralized electronic system for Rule 605 reports would make it easier for market participants to collect and aggregate data in order to compare reporting entities as the reports would be available at a single central location. Compared to the proposed amendments, which maintain the existing requirement to disseminate Rule 605 reports on a website, the creation of a centralized electronic system would lower these search costs. Such search costs would likely increase under the proposed amendments, which would increase the number of reporting entities from 236 to 359, including 85 broker-dealers that introduce or carry 100,000 or more customer accounts.[1052] The creation of a centralized electronic system would reduce these search costs by making it easier for market participants to locate Rule 605 reports, as well as to collect subsets or even the complete set of Rule 605 reports for the purpose of comparisons.

The creation of a centralized electronic system would also promote greater transparency as compared to the proposed amendments by reducing these search costs and increasing the accessibility of Rule 605 reports by ensuring that all reports are able to be obtained from a single location. As a result of this increase in transparency, investors would be better able to use Rule 605 reports to compare execution quality across larger broker-dealers, which would increase the extent to which broker-dealers would need to compete on the basis of execution quality. Likewise, compared to the proposed amendments, broker-dealers would be better able to use Rule 605 reports to compare execution quality across market centers, increasing the extent to which market centers compete on the basis of execution quality in order to attract order flow. Requiring a centralized electronic system would also enable programmatic checks that the Rule 605 reports are appropriately standardized, formatted, and complete before posting, potentially reducing processing costs for users. The Commission recognizes that the entity responsible for administering the Rule 605 centralized electronic system would incur compliance costs as a result of the creation and maintenance of such a system (including any programmatic formatting, completeness, and/or consistency checks on the reports before posting), which could be passed on to reporting entities in the form of filing fees and/or to consumers of Rule 605 reports in the form of access fees. However, to ensure that Rule 605 reports continue to be freely available, the current requirement for reporting entities to post a free version of the report on their websites (incorporating any corrections made pursuant to any aforementioned programmatic formatting, completeness, and/or consistency checks on the reports) could be retained along with the additional

[1051] *See supra* section VII.C.2.(d) for a discussion of the current search costs associated with collecting a complete or mostly complete set of Rule 605 reports to, for example, select the reporting entity offering the best execution quality in a given stock. *See also supra* section VII.D.1.(d)(3) for a discussion of how these search costs may increase as a result of an increase in the number of Rule 605 reporting entities under the proposed amendments.

[1052] *See supra* note 486 and accompanying text for a discussion of the estimated number of reporting entities under the proposed amendments. *See also supra* section VII.D.1.(d)(3) for a discussion of how the increase in reporting entities under the proposed amendments may increase search costs for some market participants.

requirement for reports to be made available through a centralized electronic system.[1053]

Furthermore, to the extent that the centralized electronic system would include programmatic formatting, completeness, and/or consistency checks on Rule 605 reports before accepting them, reporting entities would also incur costs to resolve any issues detected by such checks. Reporting entities would be most efficiently situated to remedy any identified issues in their own reports before they are posted.

The Commission has specifically considered two options for how to implement the centralized electronic system: using the existing Rule 605 NMS Plan and the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. Table 16 summarizes the costs and benefits of each of these alternatives, which are also discussed in more detail in the sections below. The Commission acknowledges there may be other options for a centralized system and requests comment on these other options.

TABLE 16—SUMMARY OF COSTS AND BENEFITS OF ALTERNATIVE CENTRALIZED ELECTRONIC SYSTEMS

Mechanism for centralized posting of reports	EDGAR	NMS plan
Benefits Relative to Proposed Amendments		
Accessibility	Reports would be in one place, reducing search costs and increasing the benefits of Rule 605 reporting. EDGAR could include programmatic checks to ensure the reports are appropriately standardized, formatted, and complete before posting, potentially reducing processing costs for users. EDGAR functionality would allow consumers to search for specific reports or all reports for a given month. However, consumers wishing to combine reports for analysis would need to pull each report separately. EDGAR does not charge access fees.	Reports would be in one place, reducing search costs and increasing the benefits of Rule 605 reporting. The NMS Plan could include programmatic checks to ensure the reports are appropriately standardized, formatted, and complete before posting, potentially reducing processing costs for users. However, the specific functionality and ease of access is uncertain. Any access fees could limit benefits.
Costs Relative to Proposed Amendments		
Costs to Build	n/a	Plan participants would incur costs to build a system to collect and validate or to contract with someone who already has a system that could work.
Costs to Maintain	n/a	Plan participants would incur the cost of maintaining a reporting system.
Reporting Costs	Reporting entities that do not already submit documents to the Commission via EDGAR would incur a one-time burden to obtain EDGAR access codes. Reporting entities would incur costs if their reports contain formatting, completeness, or consistency issues that would require resolution before acceptance. EDGAR does not charge filing fees.	Reporting entities could pay a reporting fee to cover the costs of the Plan participants. Reporting entities would incur costs if their reports contain formatting, completeness, or consistency issues that would require resolution before acceptance.
Coordination Costs	n/a	Plan participants would incur costs to coordinate on amending the NMS Plan.

Table 16: Summary of Costs and Benefits of Alternative Centralized Electronic Systems. This table presents a qualitative summary of the benefits and costs that the Commission estimates would result from various alternatives requiring the centralized posting of Rule 605 reports, relative to the proposed amendments. These benefits and costs are discussed in more detail in *infra* sections VII.E.4.(a)(1)–(2).

(1) Require Rule 605 Reports To Be Provided Through the NMS Plan

One alternative would be to require that procedures established pursuant to the NMS Plan provide for the creation and maintenance of a centralized electronic system to serve as a repository for Rule 605 reports. In this alternative, the proposed rule text could specify that the NMS plan procedures shall provide for the creation and maintenance of a centralized electronic system for such reports and make such reports available for viewing and downloading in a manner that is free and readily accessible to the public. However, the rule text could retain existing language such that, in the event there is no plan or system currently establishing such procedures, reports shall be prepared in a consistent, usable, and machine-readable electronic format and be made available for downloading from an internet website that is free and readily accessible to the public.[1054] In other words, in the absence of procedures providing for the creation and maintenance of a centralized electronic system, Rule 605 reports are required to be made available for download from an internet website that is free and readily accessible to the public (or as specified by the then-current NMS plan). This backstop requirement will help to assure the continued availability of execution quality information while a centralized electronic system is developed.

As discussed above, the creation of a centralized electronic system would generally result in additional economic benefits as compared to the proposed amendments by further promoting transparency and competition, and by reducing market participants' search costs by ensuring that all Rule 605 reports could be obtained from a single

[1053] To the extent that potential consumers of Rule 605 reports would not access the reports as a result of a centralized electronic system's access fees, this would represent a limitation to the benefits from increased accessibility. If the number of current consumers of Rule 605 would actually decrease as a result of these potential access fees, this would represent a cost in the form of reduced accessibility of Rule 605 reports. However, maintaining the current requirement for reporting entities to post a free version of the report on their websites would obviate this cost.

[1054] *See* 17 CFR 242.605(a)(2).

location. However, as the NMS Plan would be tasked with designing and implementing the centralized electronic system, the Commission would ex ante be uncertain as to the specific functionality and ease of access that such a centralized electronic system would provide. Any differences between this alternative and any other alternative in terms of the accessibility and timeliness of centralized Rule 605 information would depend on how the NMS Plan would develop the functionality for distributing or making the Rule 605 reports public.

The Commission estimates that the NMS Plan participants, consisting of 16 national securities exchanges and 1 national securities association, would incur initial and ongoing compliance costs associated with this alternative. First, the NMS Plan participants would incur initial compliance costs associated with preparing and filing amendments to the NMS Plan to account for the creation of a centralized electronic system to make reports available for viewing and downloading, along with the implementation and enforcement of that system. The Commission estimates that there would be a one-time (or initial) burden of 65 hours per NMS Plan participant to account for the creation of a centralized electronic system.[1055] Furthermore, the Commission estimates that the NMS Plan participants would incur an ongoing, annual burden of 15 hours per NMS Plan participant [1056] associated with the maintenance of the centralized electronic system. NMS Plan participants would likely also incur coordination costs to reach an agreement on the design and implementation of a centralized electronic system. However, the Commission is unable to quantify these potential coordination costs as it would depend on the extent to which there would be disagreements among the NMS plan participants.

The Commission estimates that the above initial and ongoing burdens would result in an estimated total initial compliance cost of approximately $294,950 and a total annual compliance cost of $80,444 for all NMS Plan participants. These costs would likely be passed on to reporting entities in the form of reporting fees, or to consumers of Rule 605 reports in the form of access fees. Thus, these costs could result in an increase in the initial and ongoing compliance costs incurred by reporting entities, and/or an increase in costs or a limitation to benefits for Rule 605 consumers. As discussed above, to the extent that the centralized electronic system would include pre-acceptance checks that Rule 605 reports are appropriately standardized, formatted, and complete, reporting entities would also incur costs to resolve any issues flagged by such checks, though the specific process for resolving such issues would determine the precise costs involved.

(2) Require Rule 605 Reports To Be Provided to the Commission Through EDGAR

As another alternative, the Commission could propose to have reporting entities disclose Rule 605 information directly to the Commission through the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system, with the Commission subsequently making the information publicly available on EDGAR. Such an alternative would increase certain reporting entities' compliance costs relative to the proposed amendments, as any reporting entities that do not already submit documents to the Commission via EDGAR would incur a one-time burden of submitting a notarized Form ID application to obtain EDGAR access codes, a burden that would not apply under the proposed amendments.[1057] However, an EDGAR requirement would not involve any costs to NMS Plan participants of creating and maintaining an electronic system for Rule 605 reports, and, as EDGAR would not charge any reporting or access fees, would not involve the cost to reporting entities of paying reporting fees or the cost to consumers of Rule 605 reports of paying access fees.

EDGAR functionality would allow consumers of Rule 605 to search for specific reports or all reports for a given month. However, consumers wishing to combine reports for analysis would need to pull each report separately. EDGAR functionality would also allow for programmatic checks to ensure Rule 605 reports are appropriately standardized, formatted, and complete before posting; Commission staff could design and periodically assess such checks to ensure they are effective. To the extent that these checks detect any issues in Rule 605 reports before posting, reporting entities may incur costs in resolving these issues and re-submitting their reports.

Under this alternative, entities would submit Rule 605 information to the Commission, but would not file Rule 605 information with the Commission. Under the Exchange Act, documents filed with the Commission are subject to heightened liability for misstatements contained therein than documents otherwise provided to the Commission (*e.g.,* documents furnished to the Commission).[1058] Because this alternative is intended to alter the manner by which Rule 605 reports are made available, and not the liability attached to Rule 605 reports, the alternative does not contemplate filing Rule 605 information with the Commission.

(b) Require Rule 605 Reports To Be Filed Using an Expanded Version of the Rule 606 XML Schema

Rule 605 currently requires that reports be provided in a machine-readable electronic format, [1059] and the governing NMS Plan specifies that Rule 605 reports must be provided in pipe-delimited ASCII, which is a machine-readable electronic format.[1060] This would not be changed under the proposed amendments. As an alternative, the Commission could revise Rule 605 to specify that Rule 605 reports must be provided using an

[1055] The Commission believes the monetized initial burden for this requirement to be $294,950. The Commission derived this estimate based on per hour figure from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff 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: [(Programmer Analyst at $267 for 40 hours) + (Business Analyst at $255 for 5 hour) + (Attorney at $462 for 15 hours) + (Assistant General Counsel at $518 for 5 hours)] = $17,350 per respondent for a total initial monetized burden of $365,075 ($21,475 × 17 respondents).

[1056] The Commission believes the monetized annual burden for this requirement to be $80,444. The Commission derived this estimate based on per hour figure from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff 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: [(Attorney at $462 for 10 hours) + (Assistant General Counsel at $518 for 5 hours)] = $4,732 per respondent for a total initial monetized burden of $122,570 ($7,210 × 17 respondents).

[1057] *See* 17 CFR 232.10; section 3 of the EDGAR Filer Manual (Volume I) version 40 (June 2022). Any market centers, brokers, and dealers that already submit documents on EDGAR would not incur this burden. For example, some broker-dealers choose to file the annual audit reports required by Form X–17A–5 Part III on EDGAR rather than via paper, and would thus already have the required access and procedures in place to submit Rule 605 Reports to EDGAR. *See* section 8.2.19 of the EDGAR Filer Manual (Volume II) version 62 (June 2022).

[1058] *See* section 32 of the Exchange Act.

[1059] *See* CFR 242.605(a)(2) requiring that ''. . . market centers shall prepare their reports in a consistent, usable, and machine-readable electronic format . . .''

[1060] *See* Plan at 2 (''Section V . . . provides that market center files must be in standard, pipe-delimited ASCII format''). *See also supra* note 49 and accompanying text.

expanded version of the existing XML schema for Rule 606 reports.[1061] This alternative would allow the data on Rule 605 reports to be used interchangeably with the data in Rule 606 reports, thus facilitating the usage of Rule 605 data together with Rule 606 data, in line with the Commission's original intent for the rules.[1062] In addition, the use of XML rather than pipe-delimited ASCII would facilitate the use of more complex data error checks (such as checks on elements in nested structures).

On the other hand, this alternative would require reporting entities to establish technical systems to format the reports using the expanded XML schema and render them using the PDF renderer, thus imposing additional compliance costs relative to the baseline and the proposed amendments. Furthermore, because Rule 605 reports consist solely of a series of discrete numeric values, and do not contain elements in nested structures, the Commission does not believe the more sophisticated validations enabled by the use of XML would provide significant benefits for Rule 605 reports. In addition, because the nature of the Rule 606 data (which includes narrative discussions) differs from the nature of the Rule 605 data (which is limited to a discrete set of numerical statistics), and because the population of entities that report Rule 606 data (broker-dealers) does not coincide with the population of entities that report Rule 605 data (market centers, and, under the proposed amendments, certain broker-dealers), the Commission does not believe the benefits to be realized from interchangeable usage of Rule 605 and Rule 606 data would justify the compliance costs that would arise under this alternative.

5. Other Reasonable Alternatives

(a) Releasing Aggregated CAT Data

As an alternative to the proposed amendments, the Commission could use CAT data to have either the Commission or the CAT Plan Processor[1063] provide execution quality information to the public at monthly intervals—or more frequently. This alternative would effectively eliminate the need for Rule 605 reports.

This approach would have lower compliance costs for reporting entities than the current proposal, as it would not require reporting entities to prepare Rule 605 reports. Another benefit of this alternative with regard to the current proposal is that the data in this alternative could be more comprehensive in terms of the breadth of broker-dealers whose execution quality information could be aggregated and published, because the Commission could publish aggregated data on execution quality from all broker-dealers instead of just those that meet the customer account threshold. As a result, the data would be more comprehensive, resulting in even greater benefits from transparency.[1064]

However, it would be a major undertaking for the Plan Processor to build out and adapt systems to collect, process, and publish this information, which would increase costs associated with the Plan Processor. Costs associated with the Plan Processor would also increase as a result of increased requirements for processing power for the aggregation of CAT data if such computations could not be performed with existing resources (without reducing other functionality). Any costs incurred by the Plan Processor would be passed along to Plan Participants and Industry Members, which could result in larger costs to some reporting entities.[1065] Another drawback to this alternative is that releasing CAT data to the public could increase security risks. CAT contains highly sensitive information and creating a process that would release portions of the data, even if aggregated, could present risks.

F. Request for Comment

The Commission requests comment on all aspects of this initial economic analysis, including whether the analysis has: (1) identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed new rules and rule amendments. The Commission requests and encourages any interested person to submit comments regarding the proposed rules, our analysis of the potential effects of the proposed rules and proposed amendments, and other matters that may have an effect on the proposed rules. The Commission requests that commenters identify sources of data and information as well as provide data and information to assist us in analyzing the economic consequences of the proposed rules and proposed amendments. The Commission also is interested in comments on the qualitative benefits and costs identified here and any benefits and costs that may have been overlooked. In addition to the general request for comments on the economic analysis associated with the proposed rules and proposed amendments, the Commission requests specific comment on certain aspects of the proposed amendments to Rule 605:

56. Do commenters believe that rulemaking is necessary to provide investors with a more modernized source of standardized execution quality information than what is currently contained in Rule 605 reports? What are commenters' views on why alternative market-based sources of standardized execution quality information, such as the FIF Template, have not been more widely adopted?

57. Has the Commission accurately assessed the current usage of Rule 605 reports? Do commenters agree that broker-dealers currently use Rule 605 reports in assessing best execution? Do commenters believe that Rule 605 reports currently have low usage among individual investors? If so, why? Do commenters believe that Rule 605 reports currently have low usage among institutional investors? If so, why? What are commenters' understandings of the current availability and cost of data products and/or summary reports sourced from Rule 605 data? Does the availability and costs of such products vary depending on the type of investor that the product is targeting (*i.e.,* individual or institutional)?

58. Do market participants currently lack information about the execution quality of broker-dealers? If so, does this limit the extent to which broker-dealers must compete on the basis of execution quality? Why or why not? Do commenters believe that the ability to use information on broker-dealer routing in Rule 606 reports and

[1061] *See* 17 CFR 242.606(a)(2) and (b)(3), requiring reports to be made available ''using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website.'' *See* also Order Routing and Handling Data Technical Specification, SEC (Feb. 25, 2022), *available at https://www.sec.gov/files/order_handling_data_technical_specification-2022-02-25.pdf.*

[1062] *See supra* note 141.

[1063] As set forth in the CAT NMS Plan, the Plan Processor is required to develop and, with the prior approval of the Operating Committee, implement policies, procedures, and control structures related to the CAT System that are consistent with 17 CFR 242.613(e)(4), and Appendix C and Appendix D of the CAT NMS Plan. *See* Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail, SEC, n.136 (Nov. 15, 2016), *available at https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf.*

[1064] *See supra* section VII.D.1.(a)(1)(a) for a discussion of the benefits of increased transparency from expanding reporting requirements to include larger broker-dealers.

[1065] Some reporting entities, on the other hand, may incur lower costs if they pay a smaller proportion of CAT costs.

information on market center execution quality in Rule 605 reports in order to discern the execution quality of broker-dealers currently limited? Why or why not?

59. Are commenters aware of any inconsistencies in how reporting entities separate or combine information across several market centers or business lines that they operate for the purposes of Rule 605 reporting? To the best of commenters' knowledge, is it common practice for market centers that operate SDPs to combine information about orders submitted to their SDPs with information about other orders handled by the market center for the purposes of Rule 605 reporting? Are commenters aware of any other situations in which reporting entities typically co-mingle execution quality statistics across several market centers or business lines that they operate?

60. Do commenters agree that orders submitted to qualified auctions would likely differ from other types of orders? If so, in what ways might these differences impact execution quality metrics?

61. Do commenters agree that the number of order types has increased since the early 2000s? If so, do commenters believe that a proliferation of order types has contributed to any changes in the extent to which Rule 605 reports contain information about relevant order sizes and order types? Are there any additional order types that are currently excluded from Rule 605 reporting requirements that the Commission should include?

62. Do commenters believe that a significant portion of ISO order volume may be made up of ISO orders trading at prices inferior to the NBBO? Are commenters aware of whether a significant portion of ISO orders are excluded from Rule 605 reporting requirements? Do commenters believe that it would be useful for market participants to have access to information about the execution quality of ISO orders submitted with limit prices inferior to the NBBO? Why or why not?

63. Do commenters believe that there are any other market or regulatory changes that have significantly contributed to changes in the extent to which Rule 605 reports contain information about relevant order sizes and order types?

64. Do commenters agree that, by excluding odd-lots, fractional shares, and block orders (*i.e.,* orders that are larger than 10,000 shares), Rule 605 reports are missing information about an important segments of order flow? Why or why not? Do commenters agree that individual investors would benefit from the inclusion of information about odd-lots and fractional share orders? Why or why not? Do commenters agree that the use of block trades has decreased since the initial adoption of Rule 605 but still represents an important segment of order flow in terms of total share volume? Why or why not? Are commenters aware of whether the majority of block orders tend to be not held to the market?

65. Do commenters agree that information about the execution quality of stop orders would be useful for investors? Why or why not? Do commenters agree that market centers and broker-dealers may differ in how they handle stop orders? Why or why not? Do commenters believe that the use of stop orders (*e.g.,* as a percent of total order flow) has increased or decreased in recent years? How might stop orders be different from other types of orders in terms of their execution quality metrics? Do commenters agree that grouping executable stop orders together with other types of NMLOs would skew or add noise to execution quality metrics? Why or why not? Do commenters believe that there could be any negative consequences associated with increasing the transparency of stop-loss order volume, such as the increasing the risk of certain trading strategies, *i.e.,* ''gunning for stops''? Why or why not?

66. Do commenters agree that information about the execution quality of non-exempt short sale orders would be useful for investors? Why or why not? How might non-exempt short sale orders be different from other types of orders in terms of their execution quality metrics? Do commenters believe that grouping non-exempt short sale orders together with other types of orders would skew or add noise to execution quality metrics? Why or why not?

67. Do commenters agree that orders submitted outside of regular market hours represent a small portion of overall order flow, but contain a higher concentration of individual investor orders compared to order flow during regular market hours? Why or why not? Are commenters aware of any other ways in which orders submitted outside of regular market hours differ from other types of orders and, if so, whether these differences would impact execution quality metrics in ways that may skew or add noise to these metrics?

68. Do commenters believe that, following the new definition of ''round lot'' under the MDI Rules, the order size categories currently defined in Rule 605 reports would lead to the exclusion of a relevant portion of order flow? Do commenters find the order size categories currently defined in Rule 605 reports useful? Why or why not?

69. Do commenters believe that the current categorization of NMLOs does not lead to meaningful information about execution quality? Why or why not? Do commenters find these categories useful? If so, why? Do commenters believe that the Commission should use a 10 cent threshold to determine whether a NMLO should be included within the scope of Rule 605?

70. Do commenters believe that information about the execution quality of beyond-the-midpoint limit orders is currently missing from Rule 605 reports and would be useful for investors? Do commenters believe that some market centers, such as wholesalers, may handle beyond-the-midpoint limit orders more like marketable limit orders than NMLOs? Are commenters aware of any other differences in the handling of beyond-the-midpoint limit orders, as compared to other types of NMLOs? If so, do commenters believe that these differences would impact execution quality metrics in ways that may skew or add noise to these metrics?

71. Do commenters believe that the current time-to-execution information required by Rule 605 is inappropriate given the current speed of trading in equity markets? Do commenters believe that the current time-to-execution categories defined in Rule 605 are not granular enough? What do commenters believe would be an appropriate granularity, and does it depend on the type of order (marketable, NMLO, etc.)?

72. Do commenters believe that the current requirements in Rule 605 related to measures of effective, realized and quotes spreads may lead to inaccurate or incomplete information? Do commenters agree that the use of a five-minute time horizon to calculate the realized spread is inappropriate? If so, why? Do commenters believe that the use of a five-minute time horizon leads to biased realized spreads, noisy realized spreads, both, or potentially other issues? Do commenters find effective and realized spreads expressed in dollar terms to be useful? If so, why? Do commenters believe that there are any problems with using effective and realized spreads expressed in dollar terms? If so, what?

73. Do commenters believe that size improvement information is currently missing from Rule 605 reports? If not, what specific information in Rule 605 reports (*e.g.,* effective spreads, price improvement) do commenters make use

of in order to proxy for size improvement?

74. Do commenters believe that information about IOC orders is currently missing from Rule 605 reports and would be useful for investors? Do commenters believe that IOCs likely have different execution quality characteristics than other types of orders? If so, in what ways might these differences impact execution quality metrics? Do commenters believe that these differences would impact execution quality metrics in ways that may skew or add noise to these metrics?

75. Do commenters believe that the reporting of riskless principal transactions as shares executed at the market center is inappropriate? Why or why not? Would commenters find it useful to have access to more information about the extent to which wholesalers internalize orders? If so, in what ways would this information be beneficial?

76. Do commenters believe that the search costs to access, aggregate, and compare execution quality metrics across Rule 605 reporting entities are currently high? Do commenters believe that the search costs are high enough to limit the utility of Rule 605 reports? Are commenters currently able to use Rule 605 reports to compare execution quality measures across market centers? If not, why not? Do commenters believe that the use of third parties to collect Rule 605 data alleviates some of these costs?

77. Do commenters believe the Commission has adequately described the baseline for the market for brokerage services? Are there elements of this market that are relevant to the proposed amendments that are not discussed in the release? If so, please describe.

78. Do commenters believe the Commission has adequately described the baseline for the market for trading services? Are there elements of this market that are relevant to the proposed amendments that are not discussed in the release? If so, please describe.

79. What do commenters believe would be the effect of expanding the scope of Rule 605 reporting entities to include larger broker-dealers on transparency and competition in the market for brokerage services? Do commenters believe that the costs to switching broker dealers are significant? Do commenters believe that there are other significant limits to the effects on competition of expanding the scope of Rule 605 reporting entities and, if so, what are these limits? Do commenters believe that any broker-dealer(s) would need to exit the market as a result of the proposal? If so, what effect if any would this have on competition? What do commenters believe are the effects on competition of limiting the scope of broker-dealers subject to Rule 605 to only include larger broker-dealers?

80. What are commenters' views regarding the effects of the proposal on transparency and competition in the market for trading services? Do commenters believe that there are significant limits to these effects? Do commenters believe that the effects on competition would be different (*e.g.,* stronger or weaker) for competition for individual investor order flow vs. institutional order flow? Do commenters believe that any market center(s) would need to exit the market as a result of the proposal? If so, what effect if any would this have on competition?

81. Do commenters believe that Rule 605 reports as proposed to be amended would contain sufficient information such that the reports could be used to make apples-to-apples comparisons across reporting entities? If not, is there any additional or alternative information that could be required to ensure a more apples-to-apples comparison? Please be specific.

82. Do commenters believe the proposed summary report reflecting aggregated execution quality information would contain sufficient information such that the summary reports could be used to make apples-to-apples comparisons across reporting entities? If not, is there any additional or alternative information that could be required to ensure a more apples-to-apples comparison? Please be specific. Do commenters believe that the availability of Rule 605 summary reports would have an impact on competition between reporting entities? Why or why not? Do commenters believe that the availability of Rule 605 summary reports would increase the likelihood that investors would use execution quality information to compare across reporting entities? Why or why not?

83. Do commenters believe that the availability of alternative sources of execution quality information would limit the effects of the proposal on competition across reporting entities? Do commenters believe that the availability of alternative sources of execution quality information decreases the likelihood that investors would use reports to compare execution quality across reporting entities? If so, which sources?

84. Do commenters agree with the Commission's assessment that the proposal would impact the market for TCA? Why or why not? Are commenters aware of any other market whose competitive structure would be effected by the proposal?

85. What are commenters' views of the benefits of the proposal? Do commenters believe that the proposal would increase transparency regarding the execution quality of reporting entities? Do commenters believe that the proposal would increase competition between reporting entities on the basis of execution quality? Do commenters believe that the proposal would improve execution quality for investors? Would the benefits of the proposal depend on the type of investor (*i.e.,* individual or institutional)? Why or why not? Do commenters believe that there would be any limitations to the benefits and, if so, what? Do commenters believe that the lack of a centralized electronic system for Rule 605 reports represents a limitation to the benefits of the proposed amendments? Why or why not?

86. Do commenters agree that the benefits of the proposed amendments would be limited if investors incur high costs to switch between broker-dealers, and/or if broker-dealers incur costs to switch between market centers in response to information about execution quality? Do commenters believe that these switching costs are currently high? Why or why not?

87. Are commenters aware of circumstances in which customers may not be able to select the broker-dealers of their choice, for example as a result of the customers' order flow characteristics, and whether this has or would have an impact on the switching costs for these customers? Do commenters believe that the proposal, if adopted, would affect such circumstances and, if so, how?

88. What are commenters' views of the costs of the proposal? What do commenters believe would be the main costs of the proposal? What do commenters believe would be the other costs of the proposal, if any? Do commenters believe that costs may vary across reporting entities? If so, which characteristics of the reporting entities would be the main drivers of cost differences between reporting entities? Do commenters believe that the complexity of Rule 605 reports would increase as a result of the proposed amendments and, if so, would this result in additional costs to market participants? Why or why not? Do commenters believe that search costs would increase as a result of the proposed amendments? Why or why not?

89. What are commenters' views regarding the effects the proposed

amendments might have on efficiency and capital formation?

90. Do commenters believe the proposed amendments may have unintended consequences that are not captured by the Commission's assessment of the effects the proposed amendments may have on efficiency, competition and capital formation? Why or why not?

91. Should the Commission adopt an alternative approach to any of the proposed amendments? Why or why not? Which alternatives? What are the benefits and costs of such an approach?

92. Do commenters believe that the Commission should adopt alternatives to the proposal to include only larger broker-dealers with 100,000 or more customer accounts into the scope of Rule 605? Should the Commission adopt alternative thresholds for determining which broker-dealers to include or exclude? What would be the benefits and costs of these alternative thresholds?

93. Do commenters believe that the Commission should adopt alternative amendments to the scope of orders covered by Rule 605? Should the Commission include ISO orders with limit prices inferior to the NBBO into the scope of Rule 605, either as a separate order type category or together with other orders, and what would be the costs and benefits of this approach? Should the Commission exclude orders that are quickly cancelled from Rule 605 reporting requirements? If so, what would be an appropriate threshold cancellation time below which to exclude orders? What would be the costs and benefits of excluding quickly cancelled orders? Should the Commission separate NMLOs submitted outside of regular trading hours as a separate order type category? What would be the costs and benefits of separating NMLOs submitted outside of regular trading hours as a separate order type category?

94. Do commenters believe the Commission should add additional price improvement statistics to Rule 605 reports for segmented orders in qualified auctions measuring price improvement compared to the initial price at which a segmented order was submitted to a qualified auction? If so, what would be the benefits and costs of adding these additional metrics? How would these additional metrics affect competition between qualified auctions at different market centers?

95. Do commenters believe that pipe-delimited ASCII is the best format for Rule 605 reports? Should the Commission instead expand the existing XML Schema that it has created for Rule 606 reports? Should the Commission create a new XML Schema for Rule 605 reports in a manner similar to the XML Schema for Rule 606 reports? Would XML be an improvement over the use of pipe-delimited ASCII and, if so, why? Is there another format—other than pipe-delimited ASCII and XML—that the Commission should require for Rule 605 reports? If so, which format should the Commission use, and why?

96. Should the Commission require that Rule 605 reports be posted in a centralized electronic system? Would a centralized electronic system for Rule 605 reports make it easier for investors, analysts, and others to access and gather information from Rule 605 reports? Would it be beneficial for such a system to include programmatic checks to ensure Rule 605 reports are appropriately standardized, formatted, and complete before acceptance? Do commenters believe there would be any additional benefits from establishing or requiring to be established a centralized electronic system for Rule 605 reports? If so, what? Do commenters have a view on how a centralized electronic system could be implemented? What do commenters estimate would be the costs associated with such a centralized electronic system (including any costs associate with programmatic checks for completeness, consistency, and proper formatting), and who do commenters believe would incur these costs?

97. If the Commission were to adopt a centralized electronic system for Rule 605 reports, do commenters believe EDGAR or a system created and maintained by the NMS Plan is the optimal alternative? Are there other alternatives that the Commission should consider? If so, what would be the costs and benefits associated with posting Rule 605 reports through that system? Should separate centralized electronic systems be established for different categories of reporting entities?

98. Do commenters agree with the Commission's analysis of the accessibility, data quality, costs to build, costs to maintain, reporting costs, and coordination costs associated with using EDGAR or a system created and maintained by the NMS Plan for a centralized electronic system for Rule 605 reports?

99. Are market participants likely to access and download Rule 605 reports from a centralized electronic system, rather than from a reporting entity's website? For which customers will a centralized electronic system be most beneficial, and why? How will these benefits differ if the centralized electronic system uses EDGAR, a system created maintained by the NMS Plan, or any other system proposed by commenters?

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, (''SBREFA''),[1066] the Commission requests comment on the potential effect of the proposed amendments to Rule 605 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.

IX. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') [1067] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [1068] of the Administrative Procedure Act,[1069] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [1070] 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.[1071]

The proposed rule would apply to market centers—which includes any exchange market maker, OTC market maker, ATS, national securities exchange registered with the Commission under section 6 of the Exchange Act, or national securities association registered with the Commission under section 15A of the Exchange Act—and certain brokers or dealers that are not a market center.[1072]

[1066] 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).

[1067] 5 U.S.C. 601 *et seq.*

[1068] 5 U.S.C. 603(a).

[1069] 5 U.S.C. 551 *et seq.*

[1070] Although section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission 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.

[1071] *See* 5 U.S.C. 605(b).

[1072] A broker or dealer that is not a market center would not be subject to the requirements unless it reaches or exceeds the customer account threshold.

None of the exchanges registered under section 6 that would be subject to the proposed amendments are ''small entities'' for purposes of the RFA.[1073] There is only one national securities association, and it is not a small entity as defined by 13 CFR 121.201.1220.[1074]

A broker-dealer is considered a small entity for purposes of Regulatory Flexibility Act if: (1) it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, or, if not required to prepare such statements, it had total capital of less than $500,000 on the last business day of the preceding fiscal year; and (2) it is not affiliated with any person (other than a natural person) that is not a small entity. Applying this standard, the Commission estimates that, of the firms that would be impacted by the Rule, only two exchange market makers, no OTC market makers, and no ATS are small entities.[1075] Because the Commission estimates that not more than two small entities would be required to comply with the proposed rule changes, the Commission certifies that the proposed amendments to Rule 605 would not, if adopted, have a significant economic impact on a substantial number of small entities.

For the above reasons, the Commission certifies that the proposed amendments to Rules 600 and 605, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

The Commission invites commenters to address whether the proposed rules would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. The Commission requests that commenters provide empirical data to support the extent of such impact.

Statutory Authority and Text of Proposed Rule

Pursuant to the Exchange Act and particularly sections 3(b), 5, 6, 11A, 15, 17, 19, 23(a), 24, and 36 thereof, 15 U.S.C. 78c, 78e, 78f, 78k–1, 78o, 78q, 78s, 78w(a), 78x, and 78mm, the Commission proposes to amend 17 CFR 242.600 and 17 CFR 242.605 in the manner set forth below.

List of Subjects in 17 CFR Part 242

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

For the reasons stated in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 1. The authority 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, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

■ 2. Amend § 242.600 by:

■ a. Removing paragraph (b)(40).

■ b. Redesignating paragraphs (b)(9) through (b)(110) as follows:

Old paragraph	New paragraph
(b)(9)	(b)(10)
(b)(10)	(b)(13)
(b)(11)	(b)(15)
(b)(12)	(b)(17)
(b)(13)	(b)(18)
(b)(14)	(b)(19)
(b)(15)	(b)(20)
(b)(16)	(b)(21)
(b)(17)	(b)(22)
(b)(18)	(b)(23)
(b)(19)	(b)(24)
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(b)(35)	(b)(40)
(b)(36)	(b)(41)
(b)(37)	(b)(43)
(b)(38)	(b)(45)
(b)(39)	(b)(46)
(b)(40)	deleted
(b)(41)	(b)(48)
(b)(42)	(b)(49)
(b)(43)	(b)(50)
(b)(44)	(b)(51)
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(b)(107)	(b)(114)
(b)(108)	(b)(115)
(b)(109)	(b)(116)
(b)(110)	(b)(117)

[1073] *See* 17 CFR 240.0–10(e). 17 CFR 240.0–10(e) 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. The exchanges subject to this proposed rulemaking do not satisfy this standard. *See also* Securities Exchange Act Release Nos. 82873 (Mar. 14, 2018), 83 FR 13008, 13074 (Mar. 26, 2018) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Proposed Rule); 55341 (May 8, 2001), 72 FR 9412, 9419 (May 16, 2007) (File No. S7–06–07) (Proposed Rule Changes of Self-Regulatory Organizations Proposing Release).

[1074] *See, e.g.,* Securities Exchange Act Release No. 90610 (Dec. 9, 2020), 86 FR 18808 (Apr. 9, 2021), n.2549 and accompanying text.

[1075] These estimates are based on the FYE 2021 FOCUS Reports received by the Commission from exchange market makers, OTC market makers, and ATSs that would be subject to the changes proposed to 17 CFR 242.600 and 17 CFR 242.605.

■ c. Adding new paragraphs (b)(9), (b)(11), (b)(12), (b)(14), (b)(16), (b)(42), (b)(44), and (b)(47).
■ d. Revising newly redesignated paragraphs (b)(10), (b)(13), (b)(19), (b)(20), (b)(30), (b)(57), (b)(108), and (b)(109).

The revisions and additions read as follows:

§ 242.600 NMS security designation and definitions.

* * * * *

(b) * * *

(9) *Average effective over quoted spread* means the share-weighted average for order executions of effective spread divided by the difference between the national best offer and the national best bid at the time of order receipt or, for order executions of non-marketable limit orders, beyond-the-midpoint limit orders, and orders submitted with stop prices, the difference between the national best offer and the national best bid at the time such orders first become executable. The effective spread shall be calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the national best bid and national best offer at the time of order receipt and the execution price. For order executions of non-marketable limit orders, beyond-the-midpoint limit orders, and orders submitted with stop prices, average percentage effective spread shall be calculated from the time such orders first become executable rather than the time of order receipt.

(10) *Average effective spread* means the share-weighted average of effective spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the national best bid and national best offer at the time of order receipt and the execution price. For order executions of non-marketable limit orders, beyond-the-midpoint limit orders, and orders submitted with stop prices, average effective spread shall be calculated from the time such orders first become executable rather than the time of order receipt.

(11) *Average percentage effective spread* means the share-weighted average for order executions of effective spread divided by the midpoint of the national best bid and national best offer at the time of order receipt or, for non-marketable limit orders, beyond-the-midpoint limit orders, and orders submitted with stop prices, at the time such orders first become executable. The effective spread shall be calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the national best bid and national best offer at the time of order receipt and the execution price. For order executions of non-marketable limit orders, beyond-the-midpoint limit orders, and orders submitted with stop prices, average percentage effective spread shall be calculated from the time such orders first become executable rather than the time of order receipt.

(12) *Average percentage realized spread* means the share-weighted average for order executions of realized spread divided by the midpoint of the national best bid and national best offer at the time of order receipt or, for non-marketable limit orders, beyond-the-midpoint limit orders, and orders submitted with stop prices, at the time such orders first become executable. The realized spread shall be calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer at a specified interval after the time of order execution and, for sell orders, as double the amount of difference between the midpoint and the national best bid and national best offer at a specified interval after the time of order execution and the execution price; provided, however, that the midpoint of the final national best bid and national best offer disseminated for regular trading hours shall be used to calculate a realized spread if it is disseminated less than that specified interval after the time of order execution.

(13) *Average realized spread* means the share-weighted average of realized spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer at a specified interval after the time of order execution and, for sell orders, as double the amount of difference between the midpoint and the national best bid and national best offer at a specified interval after the time of order execution and the execution price; provided, however, that the midpoint of the final national best bid and national best offer disseminated for regular trading hours shall be used to calculate a realized spread if it is disseminated less than that specified interval after the time of order execution.

(14) *Best available displayed price* means, with respect to an order to buy, the lower of: the national best offer at the time of order receipt or the price of the best odd-lot order to sell at the time of order receipt as disseminated pursuant to an effective transaction reporting plan or effective national market system plan; and, with respect to an order to sell, the higher of: the national best bid at the time of order receipt or the price of the best odd-lot order to buy at the time of order receipt as disseminated pursuant to an effective transaction reporting plan or effective national market system plan. With respect to a beyond-the-midpoint limit order, the best available displayed price shall be determined at the time such order becomes executable rather than the time of order receipt.

* * * * *

(16) *Beyond-the-midpoint limit order* means, with respect to an order received at a time when a national best bid and national best offer is being disseminated, any non-marketable buy order with a limit price that is higher than the midpoint of the national best bid and national best offer at the time of order receipt and any non-marketable sell order with a limit price that is lower than the midpoint of the national best bid and national best offer at the time of order receipt, and, with respect to an order received at a time when a national best bid and national best offer is not being disseminated, any non-marketable buy order with a limit price that is higher than the midpoint of the national best bid and national best offer at the time that the national best bid and national best offer is first disseminated after the time of order receipt, or any non-marketable sell order with a limit price that is lower than the midpoint of the national best bid and national best offer at the time that the national best bid and national best offer is first disseminated after the time of order receipt.

* * * * *

(19) *Categorized by order size* means dividing orders into separate categories for the following sizes:

(i) Less than a share;

(ii) Odd-lot;

(iii) 1 round lot to less than 5 round lots;

(iv) 5 round lots to less than 20 round lots;

(v) 20 round lots to less than 50 round lots;

(vi) 50 round lots to less than 100 round lots; and

(vii) 100 round lots or greater.

(20) *Categorized by order type* means dividing orders into separate categories for market orders, marketable limit orders (excluding immediate-or-cancel orders), marketable immediate-or-cancel orders, beyond-the-midpoint limit orders, executable non-marketable limit orders (excluding orders submitted with stop prices and beyond-the-midpoint limit orders), and executable orders submitted with stop prices.

* * * * *

(30) *Covered order* means any market order or any limit order (including immediate-or-cancel orders) received by a market center, broker, or dealer during regular trading hours at a time when a national best bid and national best offer is being disseminated and after the primary listing market has disseminated its first firm, uncrossed quotations in the security, and, if executed, is executed during regular trading hours; or any non-marketable limit order (including an order submitted with a stop price) received by a market center, broker, or dealer outside of regular trading hours or at a time when a national best bid and national best offer is not being disseminated and, if executed, is executed during regular trading hours. Covered order shall exclude any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening price or a market closing price, orders to be executed only at their full size, orders to be executed on a particular type of tick or bid, orders submitted on a ''not held'' basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price of the security at the time of execution.

* * * * *

(42) *Executable* means, for any non-marketable buy order (excluding orders submitted with stop prices), that the limit price is equal to or greater than the national best bid during regular trading hours, and, for any non-marketable sell order (excluding orders submitted with stop prices), that the limit price is equal to or less than the national best offer during regular trading hours. Executable means, for any buy order submitted with a stop price, that the stop price is equal to or greater than the national best bid during regular trading hours, and, for any sell orders submitted with a stop price, that the stop price is equal to or less than the national best offer during regular trading hours. The time an order becomes executable shall be measured in increments of a millisecond or finer.

* * * * *

(44) *Executed outside the best available displayed price* means, for buy orders, execution at a price higher than the best available displayed price; and, for sell orders, execution at a price lower than the best available displayed price.

* * * * *

(47) *Executed with price improvement relative to the best available displayed price* means, for buy orders, execution at a price lower the best available displayed price and, for sell orders, execution at a price higher than the best available displayed price.

* * * * *

(57) *Marketable limit order* means, with respect to an order received at a time when a national best bid and national best offer is being disseminated, any buy order with a limit price equal to or greater than the national best offer at the time of order receipt, or any sell order with a limit price equal to or less than the national best bid at the time of order receipt, and, with respect to an order received at a time when a national best bid and national best offer is not being disseminated, any buy order with a limit price equal to or greater than the national best offer at the time that the national best offer is first disseminated during regular trading hours after the time of order receipt, or any sell order with a limit price equal to or less than the national best bid time at the time that the national best bid is first disseminated during regular trading hours after the time of order receipt.

* * * * *

(108) *Time of order execution* means the time (at a minimum to the millisecond) that an order was executed at any venue.

(109) *Time of order receipt* means the time (at a minimum to the millisecond) that an order was received by a market center for execution, or in the case of a broker or dealer that is not acting as a market center, the time (at a minimum to the millisecond) that an order was received by the broker or dealer for execution.

* * * * *

§ 242.605 [Amended]

■ 2. Amend § 242.605 by revising the introductory text and paragraph (a) to read as follows:

§ 242.605 Disclosure of order execution information.

This section requires market centers, brokers, and dealers to make available standardized, monthly reports of statistical information concerning their order executions. This information is presented in accordance with uniform standards that are based on broad assumptions about order execution and routing practices. The information will provide a starting point to promote visibility and competition on the part of market centers and broker-dealers, particularly on the factors of execution price and speed. The disclosures required by this section do not encompass all of the factors that may be important to investors in evaluating the order routing services of a broker-dealer. In addition, any particular market center, broker, or dealer's statistics will encompass varying types of orders routed by different broker-dealers on behalf of customers with a wide range of objectives. Accordingly, the statistical information required by this section alone does not create a reliable basis to address whether any particular broker-dealer failed to obtain the most favorable terms reasonably available under the circumstances for customer orders.

(a) *Monthly electronic reports by market centers, brokers, and dealers.* (1) Every market center, broker, or dealer shall make available for each calendar month, in accordance with the procedures established pursuant to paragraph (a)(3) of this section, a report on the covered orders in NMS stocks that it received for execution from any person or that it received for execution in a prior calendar month but which remained open. Any market center that operates a qualified auction shall produce a separate report pertaining only to covered orders that the market center receives for execution in a qualified auction. Any market center that provides a separate routing destination that allows persons to enter orders for execution against the bids and offers of a single dealer shall produce a separate report pertaining only to covered orders submitted to such routing destination. Alternative trading systems (as defined in Regulation ATS, § 242.300(a)) shall prepare reports separately from their broker-dealer operators to the extent such entities are required to prepare reports. Each report shall be in electronic form; shall be categorized by security, order type, and order size; and shall include the following columns of information:

(i) For market orders, marketable limit orders, marketable immediate-or-cancel orders, beyond-the-midpoint limit orders, executable non-marketable limit orders, and executable orders with stop prices:

(A) The number of covered orders;

(B) The cumulative number of shares of covered orders;

(C) The cumulative number of shares of covered orders cancelled prior to execution;

(D) The cumulative number of shares of covered orders executed at the receiving market center, broker, or dealer (excluding shares that the market center, broker, or dealer executes on a riskless principal basis);

(E) The cumulative number of shares of covered orders executed at any other venue;

(F) For executions of covered orders, the cumulative number of shares of the full displayed size of the protected bid at the time of execution, in the case of a market or limit order to sell, or the full displayed size of the protected offer at the time of execution, in the case of a market or limit order to buy. For each order, the share count shall be capped at the order size;

(G) For executions of covered orders, the average realized spread as calculated fifteen seconds after the time of execution;

(H) For executions of covered orders, the average percentage realized spread as calculated fifteen seconds after the time of execution;

(I) For executions of covered orders, the average realized spread as calculated one minute after the time of execution;

(J) For executions of covered orders, the average percentage realized spread as calculated one minute after the time of execution;

(K) For executions of covered orders, the average effective spread;

(L) For executions of covered orders, the average percentage effective spread; and

(M) For executions of covered orders, the average effective over quoted spread, expressed as a percentage; and

(ii) For market orders, marketable limit orders, marketable immediate-or-cancel orders, and beyond-the-midpoint limit orders:

(A) The cumulative number of shares of covered orders executed with price improvement;

(B) For shares executed with price improvement, the share-weighted average amount per share that prices were improved;

(C) For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(D) For shares executed with price improvement, the share-weighted median period from the time of order receipt to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(E) For shares executed with price improvement, the share-weighted 99th percentile period from the time of order receipt to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(F) The cumulative number of shares of covered orders executed at the quote;

(G) For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(H) For shares executed at the quote, the share-weighted median period from the time of order receipt to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(I) For shares executed at the quote, the share-weighted 99th percentile period from the time of order receipt to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(J) The cumulative number of shares of covered orders executed outside the quote;

(K) For shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote;

(L) For shares executed outside the quote, the share-weighted average period from the time of order receipt, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(M) For shares executed outside the quote, the share-weighted median period from the time of order receipt to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(N) For shares executed outside the quote, the share-weighted 99th percentile period from the time of order receipt to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(O) The cumulative number of shares of covered orders executed with price improvement relative to the best available displayed price;

(P) For shares executed with price improvement relative to the best available displayed price, the share-weighted average amount per share that prices were improved as compared to the best available displayed price;

(Q) The cumulative number of shares of covered orders executed at the best available displayed price;

(R) The cumulative number of shares of covered orders executed outside the best available displayed price;

(S) For shares executed outside the best available displayed price, the share-weighted average amount per share that prices were outside the best available displayed price; and

(iii) For beyond-the-midpoint limit orders, executable non-marketable limit orders, and executable orders with stop prices:

(A) The number of orders that received either a complete or partial fill;

(B) The cumulative number of shares executed regular way at prices that could have filled the order while the order was in force, as reported pursuant to an effective transaction reporting plan or effective national market system plan. For each order, the share count shall be capped at the order size;

(C) For shares executed, the share-weighted average period from the time the order becomes executable to the time of order execution expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer;

(D) For shares executed, the share-weighted median period from the time the order becomes executable to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer; and

(E) For shares executed, the share-weighted 99th percentile period from the time the order becomes executable to the time of order execution, expressed in increments of a millisecond or finer, or, in the case of beyond-the-midpoint limit orders, from the time such orders first become executable to the time of order execution, expressed in increments of a millisecond or finer.

(2) Every market center, broker, or dealer shall make publicly available for each calendar month a report providing summary statistics on all executions of covered orders that are market and marketable limit orders that it received for execution from any person. Such report shall be made available using the most recent version of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this paragraph (a)(2). Such report shall include a section for NMS stocks that are included in the S&P 500 Index as of the first day of that month and a section for other NMS stocks. Each section shall include, for market orders and marketable limit orders, the following summary statistics for executed orders, equally weighted by symbol based on share volume:

(i) The average order size;

(ii) The percentage of shares executed at the quote or better;

(iii) The percentage of shares that received price improvement;

(iv) The average percentage price improvement per order;

(v) The average percentage effective spread;

(vi) The average effective over quoted spread, expressed as a percentage; and

(vii) The average execution speed, in milliseconds.

(3) Every national securities exchange on which NMS stocks are traded and each national securities association shall act jointly in establishing procedures for market centers, brokers, and dealers to follow in making available to the public the reports required by this section in a uniform, readily accessible, and usable electronic form.

(4) In the event there is no effective national market system plan establishing such procedures, market centers, brokers, and dealers shall prepare their reports in a consistent, usable, and machine-readable electronic format, in accordance with the requirements in paragraph (a)(1) of this section, and make such reports available for downloading from an internet website that is free and readily accessible to the public.

(5) Every market center, broker, or dealer shall keep the reports required by paragraphs (a)(1) and (a)(2) of this section posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the internet website.

(6) A market center, broker, or dealer shall make available the reports required by paragraphs (a)(1) and (a)(2) of this section within one month after the end of the month addressed in the reports.

(7) A broker or dealer that is not a market center shall not be subject to the requirements of this section unless that broker or dealer introduces or carries 100,000 or more customer accounts through which transactions are effected for the purchase or sale of NMS stocks (the ''customer account threshold'' for purposes of this paragraph). For purposes of this section, a broker or dealer that utilizes an omnibus clearing arrangement with respect to any of its underlying customer accounts shall be considered to carry such underlying customer accounts when calculating the number of customer accounts that it introduces or carries. Any broker or dealer that meets or exceeds this customer account threshold and is also a market center shall produce separate reports pertaining to each function. A broker or dealer that meets or exceeds the customer account threshold shall be required to produce reports pursuant to this section for at least three calendar months (''Reporting Period''). The Reporting Period shall begin the first calendar day of the next calendar month after the broker or dealer met or exceeded the customer account threshold, unless it is the first time the broker or dealer has met or exceeded the customer account threshold, in which case the Reporting Period shall begin the first calendar day four calendar months later. If, at any time after a broker or dealer has been required to produce reports pursuant to this section for at least a Reporting Period, a broker or dealer falls below the customer account threshold, the broker or dealer shall not be required to produce a report pursuant to this paragraph for the next calendar month.

* * * * *

By the Commission.

Dated: December 14, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–27614 Filed 1–19–23; 8:45 am]

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FEDERAL REGISTER

Vol. 88 Friday,

No. 13 January 20, 2023

Part III

The President

Memorandum of January 17, 2023—Delegation of Authority Under Section 6501(b)(2) of the National Defense Authorization Act for Fiscal Year 2022

Federal Register
Vol. 88, No. 13
Friday, January 20, 2023

Presidential Documents

Title 3—

The President

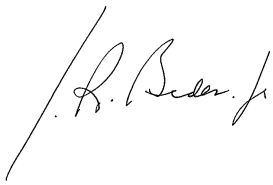
Memorandum of January 17, 2023

Delegation of Authority Under Section 6501(b)(2) of the National Defense Authorization Act for Fiscal Year 2022

Memorandum for the Administrator of the United States Agency for International Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Administrator of the United States Agency for International Development the authority vested in the President by section 6501(b)(2) of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81) (22 U.S.C. 276c–5(b)) to designate an employee of the relevant Federal department or agency with fiduciary responsibility for United States contributions to the Coalition for Epidemic Preparedness Innovations (CEPI) to serve on the CEPI Investors Council and, if nominated, on the CEPI Board of Directors, as a representative of the United States. The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, January 17, 2023

[FR Doc. 2023–01284
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Billing code 6116–01–P

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Federal Register

Vol. 88, No. 13

Friday, January 20, 2023

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The United States Government Manual	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–288 3
289–738 4
739–948 5
949–1132 6
1133–1322 9
1323–1496 10
1497–1972 11
1973–2174 12
2175–2500 13
2501–2794 17
2795–3282 18
2795–3282 18
3283–3628 19
3629–3910 20

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
3474 95

3 CFR

Administrative Orders:
Memorandoms:
Memorandom of January 6, 2023 2795
Memorandum of January 17, 2023 3909
Proclamations:
10510 739
10511 741
10512 743
10513 3283
10514 3285

5 CFR

532 1133
2634 1139
2636 1139

6 CFR

5 2797
27 2175
Proposed Rules:
19 2395

7 CFR

9 1862
205 3548
701 1862
760 1862
1400 1862
1416 1862
1437 1862
1450 1862
Proposed Rules:
16 2395
905 2862
920 16
985 18
3560 1149

8 CFR

270 2175
274a 2175
280 2175
Proposed Rules:
103 ..... 402, 1172
106 ..... 402, 1172
204 ..... 402, 1172
212 ..... 402, 1172
214 ..... 402, 1172
240 ..... 402, 1172
244 ..... 402, 1172
245 ..... 402, 1172
245a 402, 1172
264 ..... 402, 1172
274a 402, 1172

9 CFR

352 2798
354 2798
362 2798
412 2798
Proposed Rules:
1 1151
2 1151
3 1151
71 3320
77 3320
78 3320
86 3320

10 CFR

2 ..... 2187, 2188
13 2188
52 3287
72 949
207 2190
218 2190
429 ..... 2190, 3234
430 3234
431 2190
490 2190
501 2190
601 2190
810 1973
820 2190
824 2190
851 2190
1013 2190
1017 2190
1050 2190
Proposed Rules:
30 25
40 25
50 25
70 25
72 ..... 25, 1010
430 ..... 790, 1638
431 1722
1021 2029

12 CFR

19 289
109 289
201 2194
204 2195
263 1497
622 2197
747 1323
1083 1
1411 2812
Proposed Rules:
1610 1154

14 CFR

13 1114
21 2813
23 2813
25 2813

29 2813
33 2813
36 2813
39 ....1981, 1983, 1984, 2199, 2202, 2501, 3629, 3631
47 ....2813, 2815
49 2813
60 2813
61 2813
67 2813
71 ....1987, 2204, 2205, 2503, 2504, 2506, 2815, 2816, 2818, 2820
73 2813
91 2813
97 ....1988, 2813
101 2813
107 2813
121 2813
125 2813
129 2813
135 2813
141 2813
183 2813
383 1114
406 1114
440 2813

Proposed Rules:
5 1932
21 1932
39 ....1520, 2029, 2032, 2035, 2273, 2276, 2279, 2283, 2286, 2292, 2295, 2558, 3330, 3678
71 ....2561, 2867, 2869, 2870
91 1932
119 1932
121 1932
135 1932
61 34
63 34
65 34

15 CFR
6 3
734 2821
736 2821
740 ....2507, 2821
742 ....2507, 2821
744 2821
762 2821
772 2821
774 ....2507, 2821
922 953

Proposed Rules:
922 3334

16 CFR
Ch. II 2206
1 1499
305 1135

Proposed Rules:
1 2562
456 248
910 3482

17 CFR
143 1501

Proposed Rules:
242 3786

18 CFR
250 1989
385 1989

Proposed Rules:
50 2770
240 128
242 128
380 2770

19 CFR
Ch. I 2517
4 2175

20 CFR
10 974
401 1326
403 1326
422 1326
423 1326
429 1326
655 2210
702 2210
725 2210
726 2210

Proposed Rules:
726 3349

21 CFR
1 1503
101 6
172 745
862 2518
870 975
874 977
876 ....8, 3634
882 ....749, 2222
886 3636
888 ....751, 753, 979
890 ....981, 983
1000 3638
1002 3638
1010 3638
1020 3638
1030 3638
1050 3638

22 CFR
35 1505
103 1505
127 1505
138 1505

Proposed Rules:
205 2395

24 CFR

Proposed Rules:
5 ....321, 2395
1006 328

25 CFR

Proposed Rules:
226 2430

26 CFR
301 ....755, 756

27 CFR
5 2224
16 2228

Proposed Rules:
6 1171
8 1171
10 1171
11 1171

28 CFR
94 3654

Proposed Rules:
16 1012
38 2395
545 1331

29 CFR
5 2210
500 2210
501 2210
503 2210
530 2210
570 2210
578 2210
579 2210
801 2210
810 2210
825 2210
1903 2210
4071 1991
4302 1991

Proposed Rules:
2 2395

30 CFR
100 2210
1241 2520

31 CFR
501 2229
510 2229
535 2229
536 2229
539 2229
541 2229
542 2229
544 2229
546 2229
547 2229
548 2229
549 2229
551 2229
552 2229
553 2229
560 2229
561 2229
566 2229
570 2229
576 2229
578 2229
583 ....2229, 2522
584 2229
588 2229
589 2229
590 2229
591 1507
592 2229
594 2229
597 2229
598 2229
1010 3311

Proposed Rules:
208 1336
601 2871

32 CFR
199 1992
269 2239

33 CFR
27 2175
100 291
147 1511
165 ....756, 1141, 1145, 2002, 2241, 2523, 2829, 3657
277 2525
328 2878
401 1114

Proposed Rules:
100 3366
165 ....35, 1528
203 1340
334 ....1532, 3372

34 CFR

Proposed Rules:
75 2395
76 2395
685 1894

36 CFR
7 3659

Proposed Rules:
13 1176

38 CFR
17 ....2526, 3664
21 2831
36 ....985, 2537
42 985

Proposed Rules
17 2038
50 2395
61 2395
62 2395

39 CFR
111 758
233 1513
273 1513
3035 3313

Proposed Rules:
111 ....2046, 2047

40 CFR
19 986
52 ....291, 773, 1515, 2243, 2245, 2538, 2541, 2834, 2839
62 2543
81 ....775, 1515
120 2878
180 ....990, 3664

Proposed Rules:
49 2298
52 ....1341, 1454, 1533, 1537, 2050, 2303, 2873, 2876
60 2563
61 2057
62 2564
63 ....805, 2057
81 1543
180 38
721 41

41 CFR
50-210 2210
105-70 2247
301 2843
302 2843
303 2843
304 2843
305 2843
306 2843
307 2843
308 2843
309 2843
310 2843
311 2843
312 2843
313 2843
314 2843
315 2843
316 2843
317 2843

318....2843
319....2843
320....2843
321....2843
322....2843
323....2843
324....2843
325....2843
326....2843
327....2843
328....2843
329....2843
330....2843
331....2843
332....2843
333....2843
334....2843
335....2843
336....2843
337....2843
338....2843
339....2843
340....2843
341....2843
342....2843
343....2843
344....2843
345....2843
346....2843
347....2843
348....2843
349....2843
350....2843
351....2843
352....2843
353....2843
354....2843
355....2843
356....2843
357....2843
358....2843
359....2843
360....2843
361....2843
362....2843
363....2843
364....2843
365....2843
366....2843
367....2843
368....2843
369....2843
370....2843

42 CFR

88....2845
405....297
410....297, 2546
411....297
412....297
413....297
414....2546
416....297
419....297
424....297
485....297
489....297

43 CFR

10....3315

Proposed Rules:

10....1344
11....3373
2800....2304
2860....2304
2880....2304
2920....2304

45 CFR

3....1134
1149....2004
1158....2004
1302....993

Proposed Rules:

87....2395
88....820
2525....1021
2526....1021
2527....1021
2528....1021
2529....1021
2530....1021

46 CFR

221....1114
307....1114
340....1114
356....1114
506....1517

Proposed Rules:

8....1547
197....1547

47 CFR

1....783
54....2248
64....3668
73....10, 2550, 2551

Proposed Rules:

Ch. I....3681
9....2565
25....2590
54....1035, 2305
73....42, 1038, 2595, 3680

49 CFR

107....1114
171....1114
190....1114
209....1114
213....1114
214....1114
215....1114
216....1114
217....1114
218....1114
219....1114
220....1114
221....1114
222....1114
223....1114
224....1114
225....1114
227....1114
228....1114
229....1114
230....1114
231....1114
233....1114
234....1114
235....1114
236....1114
237....1114
238....1114
239....1114
240....1114
241....1114
242....1114
243....1114
244....1114
272....1114
386....1114
578....1114
831....2858
1002....299
1011....700
1022....2268
1108....700
1111....299
1114....299
1115....299,700
1244....700
1503....2175

Proposed Rules:

386....830
387....830

50 CFR

17....2006
218....604
635....786
648....11, 788, 2271, 2551, 2859, 3317
679....789, 2271, 2861, 3318

Proposed Rules:

17....2597
217....916, 3146, 3375
223....1548
224....1548
660....1171, 2061

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 10, 2023

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