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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2023–BT–PET–0003]

Energy Conservation Program for Consumer Products: Soft Lights Foundation; Petition for Repeal

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

ACTION: Final denial of petition for repeal.

SUMMARY: This document announces and provides the reasoning for the U.S. Department of Energy's (''DOE's'') denial of a petition from the Soft Lights Foundation (''Soft Lights'') requesting the repeal of two final rules published by DOE on May 9, 2022: the final rule codifying the 45 lumens per watt backstop requirement for general service lamps that Congress prescribed in the Energy Policy and Conservation Act, as amended (''EPCA'') and the final rule adopting amended definitions of general service lamps (''GSLs'') and general service incandescent lamps (''GSILs'') and associated supplemental definitions.

DATES: This final denial of petition for repeal is applicable on March 21, 2023.

ADDRESSES:

Docket: For access to the docket to read the petition, go to the Federal eRulemaking Portal at *www.regulations.gov/#!docketDetail;D=EERE-2023-BT-PET-0003.* In addition, electronic copies of the Petition are available online at DOE's energy conservation standards for general service lamps website at *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=4.*

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5000. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Overview

A. Authority and Background

EPCA [1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317). Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) These products include GSLs, the subject of this document. (42 U.S.C. 6291(30)(BB))

On May 9, 2022, DOE published a final rule adopting revised definitions of GSL and GSIL and associated supplemental definitions. 87 FR 27461 (''May 2022 Definition Final Rule''). In the May 2022 Definition Final Rule, pursuant to its authority in 42 U.S.C. 6295(i)(6)(A)(i)(II), DOE removed from the definition of GSIL the exemptions for certain incandescent lamps that are used to satisfy lighting applications traditionally served by GSILs and included those lamps in the definition of GSIL and GSL. On that same day, DOE also published a final rule codifying the 45 lumens per watt (''lm/W'') statutory backstop requirement for GSLs pursuant to its authority in 42 U.S.C. 6295(i)(6)(A)(v). 87 FR 27439 (''May 2022 Backstop Final Rule''). The statutory backstop requirement prohibits the sale of any GSL that does not meet a minimum efficacy standard of 45 lm/W. 10 CFR 430.32(dd). In the May 2022 Backstop Final Rule, DOE determined the backstop requirement applies because DOE failed to complete a rulemaking for GSLs in accordance with certain statutory criteria in 42 U.S.C. 6295(i)(6)(A). 87 FR 27439.

B. Soft Lights Petition

The Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* provides, among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) DOE received a petition from Soft Lights on December 24, 2022 requesting that, DOE repeal the May 2022 Definition Final Rule and the May 2022 Backstop Final Rule (hereafter referred to as the ''Soft Lights Petition''). In its petition, Soft Lights asserts that the purpose of a GSL is to provide safe, uniform illumination with light that disperses over distance following the inverse square law and that the May 2022 Backstop Final Rule sets a 45 lm/W minimum requirement for GSLs without setting quality metrics for the lamps. Further, Soft Lights contends that the May 2022 Definition Final Rule classifies light-emitting diodes (''LED'') lamps as a GSL even though LED lamps do not provide uniform illumination, do not emit light that disperses following the inverse square law, and are not regulated with regards to comfort, health or safety by the U.S. Food and Drug Administration (''FDA''). Soft Lights states in its petition that due to the failure of the May 2022 Backstop Final Rule and May 2022 Definition Final Rule to ensure uniform illumination, inverse square law dispersion, and the protection of the public health and welfare, these two rules must be repealed. (Soft Lights Petition, No. 1 at pp. 1–2) Further, Soft Lights argues that the term ''energy efficiency'' as defined by EPCA means providing the same quality of service using less energy and if a statute or rule fails to ensure this, it must be rejected as invalid. Soft Lights also contends that an energy efficiency statute that fails to consider the impacts on human health/public health must be rejected as illegitimate. (Soft Lights Petition, No. 1 at pp. 3, 4)

C. Synopsis of the Final Denial of Petition for Repeal

After carefully considering Soft Light's petition, DOE has determined

[1] All references to EPCA in this document refer to the statute as amended through the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

that granting Soft Light's request to withdraw the May 2022 Backstop and Definition Final Rules would be inconsistent with statutory law. In its petition, Soft Lights states that Congress was misinformed about the technical nature of LEDs and made the error of including LEDs in the definition of GSL in EPCA. (Soft Lights Petition, No. 1 at pp. 7–8) Soft Lights further asserts that the 45 lm/W backstop requirement is based on Congress's flawed understanding of how LEDs emit light and the invalid assignment of LEDs to the GSL classification. (Soft Lights Petition, No. 1 at p. 9) However, the inclusion of general service LED lamps as GSLs and the 45 lm/W backstop requirement for GSLs are prescribed by statute, and DOE does not have the authority to overturn statutory requirements enacted by Congress. (42 U.S.C. 6291(30)(BB); 42 U.S.C. 6295(i)(6)(A)(v)) Further, DOE declines to comment on Soft Light's assertion that the FDA has failed to publish comfort, health or safety regulations for LEDs. These arguments are not for consideration by DOE. DOE is not aware of any prohibition on the use of LED lighting that would have impacted its rulemakings. DOE further discusses its reasons for denying the Soft Lights petition in the following discussion.

II. DOE Analysis and Discussion

A. May 2022 Definition Final Rule

In its petition, Soft Lights asserts that the May 2022 Definition Final Rule incorrectly classifies LED lamps as GSLs. (Soft Lights Petition, No. 1 at pp. 1–2) It also asserts that, in the Energy Independence and Security Act of 2007 (Pub. L. 110–140) (''EISA''), Congress made the error of including the term ''general service light-emitting diode'' in the statute without defining the device itself, and then further erred by classifying the device as a GSL. Specifically, Soft Lights states that both DOE and Congress are under the mistaken belief that LEDs emit uniform luminance and visible radiation that disperses following an inverse square law and are a replacement for an incandescent lamp. Soft Lights further contends that, due to this mistaken belief, DOE has gone back and forth on its understanding of what can be classified as a general service lamp in its rulemakings to revise the GSL and GSIL definitions. (Soft Lights Petition, No. 1 at pp. 7–8, 11,12)

Contrary to Soft Lights assertion, DOE's withdrawal rulemakings regarding the definition of GSL were not due to DOE's misunderstanding of whether an LED can be classified as a GSL. Rather, DOE's change in position related to its interpretation of whether it could include categories of lamps in the definition of GSL that would otherwise be excluded under 42 U.S.C. 6291(30)(BB)(ii). Amendments to EPCA in EISA directed DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs, and, among other things, determine whether the exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(A)–(B)) Pursuant to this authority, DOE conducted a rulemaking to establish revised regulatory definitions for GSLs and GSILs. *See* 82 FR 7276 (Jan. 19, 2017); 82 FR 7322 (Jan. 19, 2017). Subsequently, DOE conducted a rulemaking in which it withdrew these revised definitions before they took effect. 84 FR 46661 (Sept. 5, 2019, ''September 2019 Withdrawal Rule''). Upon further review and consideration, DOE adopted the revised definitions of GSL and GSIL in the May 2022 Definition Final Rule. In that final rule, DOE explained that EPCA directs DOE to amend the statutory definitions of GSL and GSIL by regulation to achieve the energy savings for general lighting that Congress intended in EPCA generally and EISA specifically. (42 U.S.C. 6295(i)(6)(A)(i)(II) and 42 U.S.C. 6291(30)(BB)(i)(IV); 87 FR 27461, 27466) By withdrawing the expanded definitions of GSL and GSIL in the September 2019 Withdrawal Rule, DOE failed to give meaningful effect to this statutory direction. 87 FR 27461, 27466. Therefore, DOE's withdrawal rulemakings regarding the definition of GSLs were based on a misreading of EPCA's statutory direction and not a question of whether an LED lamp should be classified as a GSL.

In fact, the amendments DOE adopted in the May 2022 Definition Final Rule do not classify general service LED lamps as GSLs. Rather, Congress classified LEDs as GSLs previously through EISA, which amended EPCA to define the term ''general service lamp'' and specified it to include ''general service light-emitting diode (LED or OLED) lamps.'' (42 U.S.C. 6291(30)(BB), Title III, Subtitle B, Section 321 of EISA) A final rule technical amendment published on March 23, 2009, incorporated into DOE's regulations EPCA's definition of ''general service lamp,'' providing that it includes general service incandescent lamps, compact fluorescent lamps, general service light-emitting diode lamps, organic light-emitting diode lamps, and any other lamps that the Secretary determines are used to satisfy lighting applications traditionally served by general service incandescent lamps; however, the definition didn't apply to any lighting application or bulb shape excluded from the ''general service incandescent lamp'' definition, or any general service fluorescent lamp or incandescent reflector lamp. 74 FR 12058, 12065.

The amendments adopted in the May 2022 Definition Final Rule made no changes to the statutory inclusion of general service light-emitting diode lamps and organic light-emitting diode lamps as GSLs and the repeal of this rule would not remove the statutory inclusion of LED lamps as a type of GSL. 87 27461, 27480–27481; 10 CFR 430.2. Further, the language in EPCA is clear that Congress intended general service light-emitting diode (LED or OLED) lamps to be included in the definition of ''general service lamp.'' (42 U.S.C. 6291(30)(BB)(i))

B. May 2022 Backstop Final Rule

Soft Lights asserts in its petition that DOE went back and forth on its decision on whether the 45 lm/W backstop requirement was triggered because of Congress' flawed understanding of how LEDs emit light and Congress' error in including the term ''general service light emitting diode'' as a GSL. (Soft Lights Petition, No. 1 at p. 11) Further, Soft Lights contends that there is no technology that meets Congress' criteria of a GSL that provides the same quality of service as an incandescent with 45 lm/W efficacy and therefore, DOE is not obligated to, nor can it implement the 45 lm/W backstop requirement. (Soft Lights Petition, No. 1 at p. 9) Specifically, Soft Lights argues that LED technology does not meet the necessary criteria, stating that LEDs emit a non-uniform luminance and have blue wavelength and flicker that are harmful to human health. (Soft Lights Petition, No. 1 at pp. 16–24) Soft Lights contends that to set energy efficiency standards DOE must include light quality metrics paired with luminous efficacy, citing uniform illumination, inverse square law dispersion, a smooth continuous spectral distribution from low blue to high red, and analog flicker characteristics. (Soft Lights Petition, No. 1 at p. 16) Soft Lights also argues that the 45 lm/W backstop requirement will force manufacturers to produce LED lamps, even though the FDA has not stated LED visible radiation is safe and has not published comfort, health, or safety regulations for LED products. (Soft Lights Petition, No. 1 at p. 3)

EPCA directs DOE to conduct two rulemaking cycles to evaluate energy conservation standards for GSLs. (42

U.S.C. 6295(i)(6)(A)–(B)) For the first rulemaking cycle, EPCA directs DOE to initiate a rulemaking process prior to January 1, 2014, to determine whether: (1) To amend energy conservation standards for GSLs and (2) the exemptions for certain incandescent lamps should be maintained or discontinued. (42 U.S.C. 6295(i)(6)(A)(i)) The rulemaking is not limited to incandescent lamp technologies and must include a consideration of a minimum standard of 45 lm/W for GSLs. (42 U.S.C. 6295(i)(6)(A)(ii)) EPCA provides that if the Secretary determines that the standards in effect for GSILs should be amended, a final rule must be published by January 1, 2017, with a compliance date at least 3 years after the date on which the final rule is published. (42 U.S.C. 6295(i)(6)(A)(iii)) The Secretary must also consider phased-in effective dates after considering certain manufacturer and retailer impacts. (42 U.S.C. 6295(i)(6)(A)(iv)) If DOE fails to complete a rulemaking in accordance with 42 U.S.C. 6295(i)(6)(A)(i)–(iv), or if a final rule from the first rulemaking cycle does not produce savings greater than or equal to the savings from a minimum efficacy standard of 45 lm/W, the statute provides a ''backstop'' under which DOE must prohibit sales of GSLs that do not meet a minimum 45 lm/W standard. (42 U.S.C. 6295(i)(6)(A)(v)) As a result of DOE's failure to complete a rulemaking in accordance with the statutory criteria in 42 U.S.C. 6295(i)(6)(A), DOE codified the backstop requirement in the May 2022 Backstop Final Rule. (87 FR 27439, 27442–27443)

As explained in the May 2022 Backstop Final Rule, DOE was delayed in certifying the backstop requirement for GSLs by two years due to its evolving position under the first cycle of GSL rulemaking under 42 U.S.C. 6295(i)(6)(A). This related to DOE's changing interpretation of whether the statutory backstop had been triggered and, contrary to Soft Lights assertion, had no bearing on whether LEDs were properly classified as GSLs under EPCA. As previously stated, the inclusion of LEDs in the definition of GSL is a clear statutory requirement that is not subject to agency discretion. Further, the 45 lm/W backstop requirement is not technology specific, and DOE is not banning incandescent technology. Thus, while Soft Lights is correct that there are currently no GSILS on the market that can meet the 45 lm/W requirement, this does not foreclose an incandescent from being invented, and sold, in the future that could meet the 45 lm/W requirement. Lastly, even if the 45 lm/W backstop had not been triggered, the rulemaking that DOE was required to undertake in 42 U.S.C. 6295(i)(6)(A)(i) was to consider standards for GSLs. Congress had already defined GSLs in EPCA as including LEDs and directed that the rulemaking ''shall not be limited to incandescent lamp technologies.'' (42 U.S.C. 6295(i)(6)(A)(ii)(I)) Thus, DOE had existing statutory authority, aside from the backstop requirement, to establish energy conservation standards for GSLs, which, by statute, include LEDs.

C. Adverse Health Effects of LEDs

In its petition, Soft Lights asserts that DOE's review of the health effects of LED lamps was inadequate and negligent. Further, Soft Lights contends that the FDA has sole authority to regulate visible radiation from electronic products and DOE was negligent in mandating the 45 lm/W backstop requirement for GSLs without ensuring that the FDA publishes comfort, health, and safety regulations for LED products. (Soft Lights Petition, No. 1 at p. 2–3, 13, 28) Soft Lights contends that LED lamps pose a danger to public health and LED visible radiation causes serious adverse health effects and creates discriminatory barriers. (Soft Lights Petition, No. 1 at p. 41)

DOE notes that the FDA has authority to regulate certain aspects of LED products as radiation-emitting devices and has issued performance standards for certain types of light-emitting products.[3] Currently, there is no FDA performance standard for LED products in part 1040. DOE acknowledges that Soft Lights expresses in its petition health concerns that Soft Lights associates with LEDs. However, such concerns are not for the consideration of DOE. DOE is not currently aware, nor was it at the time the May 2022 Definition and Backstop Final Rules were issued, of any prohibition on the use of LED lighting that would have impacted its rulemaking.

III. Denial of Petition

Taking into account all of the factors discussed previously and consistent with the requirements under EPCA, DOE is hereby denying Soft Light's petition for rulemaking.

IV. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final denial of petition for repeal.

[3] *See,* the Federal Food, Drug and Cosmetic Act section 531 *et seq.;* 21 U.S.C. 360KK; and 21 CFR part 1040.

Signing Authority

This document of the Department of Energy was signed on March 14, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 15, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–05587 Filed 3–20–23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2011–0246; Amdt. No. 91–321F]

RIN 2120–AL79

Prohibition Against Certain Flights in the Territory and Airspace of Libya

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

ACTION: Final rule.

SUMMARY: This action amends, with modifications to reflect changed conditions in the Tripoli Flight Information Region (FIR) (HLLL) and the associated risks to U.S. civil aviation safety, the prohibition against certain flight operations in the Tripoli FIR (HLLL) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Specifically, with this final rule, the FAA removes the prohibition against U.S. civil aviation operations at altitudes below Flight Level (FL) 300 in

those portions of the Tripoli FIR (HLLL) that are outside the territory and airspace of Libya. The FAA also republishes the approval process and exemption information for this SFAR consistent with other recently published flight prohibition SFARs. The FAA also modifies the title of the relevant section of the Code of Federal Regulations to reflect that the geographic scope of FAA's flight prohibition for U.S. civil aviation is now limited to the territory and airspace of Libya.

DATES: This final rule is effective on March 17, 2023.

FOR FURTHER INFORMATION CONTACT: Bill Petrak, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8166; email *bill.petrak@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action amends SFAR No. 112, title 14 Code of Federal Regulations (CFR), 91.1603, which currently prohibits certain U.S. civil flight operations in the Tripoli FIR (HLLL) [1] by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. This final rule contains modifications to reflect changed conditions in the Tripoli FIR (HLLL) and the associated risks to U.S. civil aviation safety. Specifically, with this final rule, the FAA removes the prohibition against U.S. civil aviation operations at altitudes below Flight Level (FL) 300 in those portions of the Tripoli FIR (HLLL) that are outside the territory and airspace of Libya. However, the FAA continues to prohibit U.S. civil aviation operations at all altitudes in the territory and airspace of Libya due to the significant, continuing unacceptable risks to the safety of such operations from various armed groups' access to advanced anti-aircraft weapon systems, airspace de-confliction challenges, and ongoing, intermittent violence in Libya.

The FAA also extends the expiration date of this Special Federal Aviation Regulation (SFAR) from March 20, 2023 until March 20, 2025. Consistent with other recently published flight prohibition SFARs, this action also republishes the approval process and exemption information for this flight prohibition SFAR.

II. Authority and Good Cause

A. Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Sections 106(f) and (g) of title 49, U.S. Code (U.S.C.), subtitle I, establish the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 112, 14 CFR 91.1603, from conducting flight operations in the territory and airspace of Libya due to the continuing hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S. Code, 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.'' Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment and the delayed effective date because they would be impracticable, unnecessary, and contrary to the public interest.

Providing notice and the opportunity for the public to comment here would be contrary to the public interest. The FAA's flight prohibitions, and any amendments thereto, need to include appropriate boundaries that reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting or under-restricting U.S. operators' routing options. However, the risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid in circumstances involving fighting, extremist and militant activity, or periods of heightened tensions, particularly where weapons capable of targeting or otherwise negatively affecting U.S. civil aviation are or may be present. This fluidity, and the potential for rapid changes in the risks to U.S. civil aviation, significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. The delay that would be occasioned by providing an opportunity to comment on this action would significantly increase the risk that the resulting final action would not accurately reflect the current risks to U.S. civil aviation associated with the situation and thus would not establish boundaries for the flight prohibition commensurate with those risks.

While the FAA sought and responded to public comments, the boundaries of the area in which unacceptable risks to the safety of U.S. civil aviation existed might change due to: evolving military or political circumstances; extremist and militant group activity; the introduction, removal, or repositioning of more advanced anti-aircraft weapon systems; or other factors. As a result, if the situation improved while the FAA sought and responded to public comments, the rule the FAA finalized might be over-restrictive, unnecessarily limiting U.S. operators' routing options and potentially causing them to incur unnecessary additional fuel and operations-related costs, as well as

[1] Articles 1 and 2 of the Convention on International Civil Aviation (the ''Chicago Convention''), done at Chicago, December 7, 1944, and to which nearly all countries around the world are parties, recognize that every country has complete and exclusive sovereignty of the airspace above its territory, and defines the term ''territory,'' for purposes of the Convention, as ''the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such [country].'' While there are many potential nuances depending upon local geographic factors, in most cases, the territorial sea of a country extends 12 nautical miles from the coastal baselines of that country drawn in accordance with international law. The Tripoli FIR (HLLL) includes the entire territory and airspace of Libya, and extends north into international airspace above the Gulf of Sidra. It also extends south into a portion of the territory and airspace of Chad.

potentially causing passengers to incur unnecessarily some costs attributed to their time. Conversely, if the situation deteriorated while the FAA sought and responded to public comments, the rule the FAA finalized might be under-restrictive, allowing U.S. civil aviation to continue operating in areas where unacceptable risks to their safety had developed. Such an outcome would endanger the safety of these aircraft, as well as their passengers and crews, exposing them to unacceptable risks of death, injury, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the territory and airspace of Libya.

Alternatively, if the FAA made changes to the area in which U.S. civil aviation operations would be prohibited between a notice of proposed rulemaking and a final rule due to changed conditions, the version of the rule the public commented on would no longer reflect the FAA's current assessment of the risk environment for U.S. civil aviation. In addition, some or all of the rationale for such changes during the course of the rulemaking might be based upon classified information or controlled unclassified information not authorized for public release. The FAA's ability to notify the public of its reasoning and respond to comments would necessarily be limited—thus rendering such proceedings impracticable, unnecessary, and contrary to the public interest.

Therefore, providing notice and the opportunity for comment would be contrary to the public interest, as it would hinder FAA's ability to maintain appropriate flight prohibitions based on up-to-date risk assessments of the risks to the safety of U.S. civil aviation operations in airspace managed by other countries.

For the same reasons discussed above, the potential safety impacts and the need for prompt action on up-to-date information that is not public would make delaying the effective date impracticable and contrary to the public interest. For altitudes at or below FL300 in those portions of the Tripoli FIR (HLLL) that are outside the territory and airspace of Libya, any delay in the effective date of the rule would continue a prohibition on U.S. civil aviation operations at those altitudes that the FAA has determined is no longer needed for the safety of U.S. civil aviation and would thus unnecessarily restrict U.S. operators' routing options at those altitudes.

Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

III. Background

On July 27, 2020, the FAA published a final rule in the **Federal Register** prohibiting U.S. civil flight operations in the entirety of the territory and airspace of Libya. That rule also prohibited U.S. civil flight operations in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya at altitudes below FL300.[2] The FAA assessed the area of unacceptable inadvertent risk to U.S. civil aviation operations at all altitudes had spread to the entire territory and airspace of Libya. This spread was due to the geographic expansion of the ongoing conflict between the Tripoli-based Government of National Accord (GNA) and the Tobruk-based Libyan National Army (LNA) for control over Libya's government, territory, and resources.

Foreign state actors continued to provide material and technical assistance to both the GNA and the LNA. This support involved third party forces, as well as the deployment of advanced weapons, including advanced fighter aircraft, weaponized unmanned aircraft systems (UAS), surface-to-air missile (SAM) systems, and, likely, jammers. Both sides had conducted air strikes, utilizing tactical combat aircraft and long-range, armed UAS, to target airport infrastructure and aircraft on the ground at airports. In May 2020, Russia deployed multiple fighter aircraft to Libya to provide close air support to its private military contractors and the LNA and protect their operations from attacks by manned aircraft and weaponized UAS. The foreign states supporting the LNA and GNA also deployed anti-aircraft weapons and self-protection jamming systems to mitigate the air threat. The combination of these activities posed airspace de-confliction concerns and an inadvertent risk of in-flight engagement of civil aircraft as a result of possible misidentification or miscalculation.

More advanced, higher-altitude air defense systems had also been deployed to Libya. In addition to an SA–22 SAM system, a foreign sponsor associated with the GNA had reportedly deployed multiple variants of anti-aircraft weapons to provide a layered air defense in Tripoli. This deployment included a medium range I-Hawk SAM and a Korkut 35mm air defense gun.

The activities of the GNA and the LNA also presented risks to U.S. civil aviation in the territory and airspace of Libya. Both the GNA and the LNA possessed anti-aircraft artillery and MANPADS, some of which have a maximum altitude of up to 25,000 feet (7,620 meters). As a result of weapons activity posing a risk to civil aviation, the GNA closed Mitiga International Airport (HLLM) on multiple occasions during January and February 2020. LNA leader General Haftar announced on January 23, 2020, that LNA forces would engage any military or civil aircraft operating from Mitiga International Airport (HLLM). The FAA was also concerned the GNA and the LNA might augment their air defense operations with increased Global Positioning System (GPS) and radio frequency jamming.

Collectively, the FAA assessed that the escalating fighting, increased foreign intervention, and deployment of additional air defense capabilities presented an increasing risk to U.S. civil aviation operations in the territory and airspace of Libya at all altitudes. For these reasons, the July 27, 2020 final rule incorporated the flight prohibition on U.S civil aviation operations in the territory and airspace of Libya at all altitudes, previously contained in NOTAM KICZ A0026/19, into SFAR No. 112, § 91.1603.

In addition, the FAA assessed that the hazards to the safety of U.S. civil aviation operations at altitudes below FL 300 described in the preamble to the March 2019 final rule remained of concern in those portions of the Tripoli FIR (HLLL) that are outside the territory and airspace of Libya.[3] The FAA noted that foreign military manned and unmanned tactical aircraft might operate or approach targets from off the northern coast, presenting airspace de-confliction challenges at altitudes below FL300. Additionally, there was the potential for GPS interference bleed over that might impact flights operating over the southern Mediterranean Sea in the Tripoli FIR (HLLL). For these reasons, the July 27, 2020 final rule also continued the prohibition against all flights by U.S. civil operators and airmen at altitudes below FL300 in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya.[4]

[2] *Prohibition Against Certain Flights in the Tripoli Flight Information Region (FIR) (HLLL)* final rule, 85 FR 45084 (Jul. 27, 2020).

[3] *Amendment of the Prohibition Against Certain Flights in the Tripoli Flight Information Region (FIR) (HLLL)* final rule, 84 FR at 9952–9953 (Mar. 19, 2019).

[4] For all of the reasons described in the preamble to the July 27, 2020 final rule, the FAA also extended the expiration date of SFAR No. 112, § 91.1603, until March 20, 2023. *See Prohibition Against Certain Flights in the Tripoli Flight*

Continued

IV. Discussion of the Final Rule

The FAA continues to assess the situation in the territory and airspace of Libya as hazardous for U.S. civil aviation. Representatives of the Libyan Army of the GNA and the LNA General Command of the Armed Forces signed a United Nations-backed ceasefire agreement on October 23, 2020. Among other things, the October 23, 2020 ceasefire provided for: an immediate ceasefire, effective upon signature of the agreement; the departure of all mercenaries and foreign fighters from Libya, including its land, air, and sea territory, within three months; and the suspension of all military training agreements and departure of all training crews until a new unified government assumed its functions.

Since the October 23, 2020 ceasefire agreement, combat operations in Libya have significantly decreased, with only intermittent ground clashes between opposing factions. In addition, Russian-backed Vagner Group (also referred to as private military company (PMC) Wagner) has reduced the number of its air defense systems and forces deployed in Libya, with more than 1,300 Vagner personnel having departed the country. However, protests and intermittent clashes between the various armed factions in Libya continue. Unrest in the capital, in particular, has been driven by militia infighting and multiple failed attempts by the Government of National Stability (GNS) to enter Tripoli, and has contributed to the lack of progress on key milestones set forth in the ceasefire agreement. In particular, the provisions of the ceasefire agreement relating to departure of all mercenaries and foreign fighters from Libya and the suspension of all military training agreements and departure of all training crews until the Government of National Unity (GNU) assumed its functions have not been fully implemented. In June and August 2022, the GNS attempted to enter Tripoli to seize control of government offices and were met with protests and violence, including armed clashes that resulted in the temporary suspension of flight operations at Mitiga International Airport (HLLM).

Airspace de-confliction challenges also remain a safety-of-flight concern in the territory and airspace of Libya. Various armed groups operating in Libya continue to have access to advanced anti-aircraft weapons systems. These groups likely lack comprehensive airspace awareness sufficient to enable effective aircraft identification and de-confliction of civil and military flights. These circumstances create the potential for localized operational control and use of anti-aircraft systems, rather than a coordinated air defense command and control structure, posing an enduring inadvertent risk to civil aviation operations in the territory and airspace of Libya. Forces aligned with GNA and LNA can quickly increase force protection measures, such as GPS jamming, air strikes, and the deployment of SAM systems capable of reaching as high as 49,000 feet. In addition to foreign-operated air defense capabilities, both GNA and LNA forces have access to anti-aircraft artillery and advanced MANPADS, some of which have a maximum altitude of 25,000 feet.

On August 22, 2022, LNA air defense forces claimed to have shot down a U.S. MQ–9 UAS operating in the vicinity of Benghazi during a period of increased tensions and threats of renewed violence between competing militias vying for control of Tripoli. The MQ–9 was operating in support of diplomatic engagements, and the operator had conducted pre-mission coordination with Libyan authorities. While this incident involved a military UAS, it is illustrative of the potential for inadequate aircraft identification and de-confliction procedures leading to an inadvertent shoot down, resulting in significant casualties, and loss of an aircraft, if a civil aircraft carrying passengers were mistakenly engaged.

In addition, despite a reduction in foreign presence, tensions in Libya remain elevated, and warring factions in Libya and their affiliated foreign sponsors maintain access to advanced weapons. Tensions over the implementation of a unity government spiked violently in March, June, and August 2022 in conjunction with GNU attempts to enter Tripoli and assume control of national government functions. The ensuing clashes between Libya's various armed factions included small arms and indirect fire exchanges, causing temporary disruptions to airport operations in the capital region. Within their respective strongholds in various areas of the country, Libya's armed factions have either gained access to, or have foreign sponsors equipped with, tactical aircraft, long-range weaponized UAS, air defense systems, and GPS jammers. Given the current tenuous security environment in Libya, the FAA remains concerned about the continued risk of rapid escalation involving these systems during spikes in tensions, which would pose safety-of-flight risks to U.S. civil aviation outside the capital region.

As a result of the significant, continuing unacceptable risks to the safety of U.S. civil aviation operations at all altitudes in the territory and airspace of Libya, the FAA maintains the prohibition on U.S. civil aviation operations at all altitudes in the territory and airspace of Libya and extends the expiration date of SFAR No. 112, 14 CFR 91.1603, from March 20, 2023, until March 20, 2025. Further amendments to SFAR No. 112, 14 CFR 91.1603, might be appropriate if the risk to U.S. civil aviation safety and security changes. In this regard, the FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the territory and airspace of Libya.

The FAA assesses the risk to U.S. civil aviation operations in the portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya at altitudes below FL300 has diminished and the situation has stabilized sufficiently to permit U.S. civil aviation operations to resume in that airspace. Since the October 2020 ceasefire agreement, foreign actors have significantly reduced weapons shipments and military activities off the coast of Libya. Previously, these activities included targeting suspected weapons shipments destined for the opposing side or their foreign sponsors. As a result, the risk of either side or their foreign sponsors misidentifying civil aircraft operations in the overwater portion of the Tripoli FIR as carrying weapons shipments destined for the other side or their foreign sponsors and mistakenly targeting them has diminished. The reduction of widespread conflict has also reduced the risk to U.S. civil aviation operations in the small portion of the Tripoli FIR (HLLL) that extends into Chad's territorial airspace. Therefore, due to the diminished risks to the safety of U.S. civil aviation operations and stabilized situation in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya, the FAA amends SFAR No. 112, 14 CFR 91.1603, to remove the prohibition on U.S. civil aviation operations in those areas.

The FAA republishes the details concerning the approval and exemption processes in Sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 112, § 91.1603. The FAA also modifies the heading of SFAR No. 112, 14 CFR 91.1603, in the CFR, to reflect the change in the geographic scope of the FAA's flight prohibition for U.S.

Information Region (FIR) (HLLL) final rule, 85 FR 45084 (Jul. 27, 2020).

civil aviation, which is now limited to the territory and airspace of Libya.

V. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

A. Approval Process Based on an Authorization Request From a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the territory and airspace of Libya. If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 112, 14 CFR 91.1603, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the territory and airspace of Libya, that department, agency, or instrumentality may request the FAA to approve persons described in paragraph (a) of SFAR No. 112, 14 CFR 91.1603, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.[5] The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the operator(s) to commence the proposed operation(s).

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267–8166, to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons described in SFAR No. 112, 14 CFR 91.1603, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the territory and airspace of Libya where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the territory and airspace of Libya and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the territory and airspace of Libya. The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add to the approval, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the territory and airspace of Libya. The approval conditions discussed below apply to all operators. Requestors should send updated lists to the email address they obtained from the Air Transportation Division by calling (202) 267–8166.

If an approval request includes classified information or controlled unclassified material not authorized for public release, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 112, 14 CFR 91.1603, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the territory and airspace of Libya; and

[5] This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA approval.

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the territory and airspace of Libya.

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under chapter 443 of title 49, U.S. Code.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 112, 14 CFR 91.1603. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those described in the approval process in the previous section. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standards described in 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the territory and airspace of Libya where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the territory and airspace of Libya and the airports, airfields, or landing zones at which the aircraft will take off and land;
- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.,* the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble to the proposed operations, to support the relief sought and demonstrate that granting such relief would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 112, 14 CFR 91.1603. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 112, 14 CFR 91.1603.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact Aviation Safety Inspector Bill Petrak for instructions on submitting it to the FAA. His contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

VII. Severability

Congress authorized the FAA by statute to promote safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security. 49 U.S.C. 44701. Consistent with that mandate, the FAA is prohibiting certain persons from conducting flight operations in the territory and airspace of Libya due to the continuing hazards to the safety of U.S. civil flight operations. The purpose of this rule is to operate holistically in addressing a range of hazards and needs in the territory and airspace of Libya. However, the FAA recognizes that certain provisions focus on unique factors. Therefore, the FAA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of this final rule's unique provisions, the remaining provisions should stand, thus allowing the FAA to continue to fulfill its Congressionally authorized role of promoting safe flight of civil aircraft in air commerce.

VIII. Regulatory Notices and Analyses

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.,* requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as codified in 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive order. As 5 U.S.C. 553 does

not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

This action amends, with modifications to reflect changed conditions in the Tripoli FIR (HLLL) and the associated risks to U.S. civil aviation safety, the SFAR prohibiting certain U.S. civil flight operations in the Tripoli FIR (HLLL). This action also extends the expiration date of the SFAR for an additional two years. As a result of this rule, U.S. civil operators and airmen may operate in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya at all altitudes, instead of being limited to conducting flight operations in those portions of the Tripoli FIR (HLLL) outside the territory and airspace of Libya at altitudes at or above FL300. U.S. civil aviation operations in the territory and airspace of Libya remain prohibited at all altitudes.

The alternative flight routes result in some additional fuel and operations costs to the operators, as well as some costs attributed to passenger time. Accordingly, the incremental costs of the amendment of this flight prohibition SFAR are minimal. By prohibiting unsafe flights, the benefits of this rule will exceed the minimal flight deviation costs. Therefore, the FAA finds that the incremental costs of amending and extending SFAR No. 112, 14 CFR 91.1603, will be minimal and are exceeded by the benefits of avoided risks of deaths, injuries, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the territory and airspace of Libya.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the territory and airspace of Libya, a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA's policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistently with the obligations of the United States under international agreements.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2–5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

The FAA has determined that this action will not have a significant environmental effect abroad. In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

IX. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132. The agency has

determined this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule will not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a ''significant energy action'' under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609 promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action will have no effect on international regulatory cooperation.

X. Additional Information

A. Electronic Access

Except for classified and controlled unclassified material not authorized for public release, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov*. A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) (set forth as a note to 5 U.S.C. 601) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Libya.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend § 91.1603 by revising the section heading and paragraphs (b), (c), and (e) to read as follows:

§ 91.1603 Special Federal Aviation Regulation No. 112—Prohibition Against Certain Flights in the Territory and Airspace of Libya.

* * * * *

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the territory and airspace of Libya.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the territory and airspace of Libya, provided that such flight operations occur under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. Government (or under a subcontract between the prime contractor of the department, agency, or instrumentality and the person described in paragraph (a) of this section), with the approval of the FAA, or under an exemption issued by the FAA. The FAA will consider requests for approval or exemption in a timely manner, with the order of preference being: First, for those operations in support of U.S. Government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. Government department, agency, or instrumentality; and third, for all other operations.

* * * * *

(e) *Expiration.* This SFAR will remain in effect until March 20, 2025. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on or about March 13, 2023.

Billy Nolen,

Acting Administrator.

[FR Doc. 2023–05390 Filed 3–17–23; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 803, 812, and 822

[Docket No. FDA–2021–N–0246]

Medical Devices; Technical Amendments

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

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is amending certain medical device regulations to update mailing address and docket number and conform the regulatory provisions to the Federal Food, Drug, and Cosmetics Act (FD&C Act). The rule does not impose any new regulatory requirements on affected parties. This action is editorial in nature to correct errors and to ensure accuracy and clarity in the Agency's regulations.

DATES: This rule is effective March 21, 2023.

FOR FURTHER INFORMATION CONTACT: Madhusoodana Nambiar, Office of Policy, Center for Devices and

Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 5519, Silver Spring, MD 20993–0002, 301–796–5837.

SUPPLEMENTARY INFORMATION:

I. Background

As a part of this technical amendment, the FDA Center for Devices and Radiological Health (CDRH) is making changes to 21 CFR parts 10, 803, 812, and 822 to revise contact addresses, correct docket numbers, and conform the regulatory provisions to the FD&C Act to ensure accuracy and clarity in the Agency's medical device regulations. The changes published in this notice are non-substantive and editorial in nature.

II. Description of the Technical Amendments

The regulation, 21 CFR 10.80(h), is being revised to make a non-substantive editorial change to update a citation that was moved from title 42 to title 21. In § 803.19(b), we are removing the address and replacing it with a website link. We are correcting the docket number in the regulations §§ 812.38 and 812.47 with the docket number specified in the codified of this rulemaking. For §§ 822.1 and 822.4, we are adding the criterion from section 522(a)(1)(A)(ii) of the FD&C Act (21 U.S.C. 360l(a)(1)(A)(ii)) to these provisions for consistency with the statutory language. Similarly, we are amending § 822.24 for consistency with section 522(b)(1) of the FD&C Act. We are amending § 822.7(a)(1) by removing the name of an office that is now obsolete due to CDRH's reorganization. The rule does not impose any new regulatory requirements on affected parties. The amendments are editorial in nature and should not be construed as modifying any substantive standards or requirements.

III. Notice and Public Comment

Publication of this document constitutes final action under the Administrative Procedure Act (APA) (5 U.S.C. 553). The APA generally exempts ''rules of agency organization, procedure, or practice'' from the requirements of notice and comment rulemaking (5 U.S.C. 553(b)(A)). Rules are also generally exempt from such requirements when an agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(B)).

FDA has determined that this rulemaking meets the APA's notice and comment exemption requirements. The revisions in this rule make technical or non-substantive changes. Some of these revisions pertain to the CDRH reorganization, and constitute ''rules of agency organization, procedure, or practice'' not subject to the requirements of notice and comment under 5 U.S.C. 553(b)(A). The balance of these revisions updates the omitted language from the statute or the citation and docket number. Such technical, non-substantive changes are ''a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94 (D.C. Cir. 2012) (quotation marks and citation omitted). FDA accordingly for good cause finds that notice and public procedure thereon are unnecessary for these amendments.

The APA allows an effective date less than 30 days after publication as ''provided by the agency for good cause found and published with the rule'' (5 U.S.C. 553(d)(3)). An effective date 30 or more days from the date of publication is unnecessary in this case because the amendments do not impose any new regulatory requirements on affected parties, and affected parties do not need time to ''adjust to the new regulation'' before the rule takes effect. *Am. Federation of Government Emp., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981). Therefore, FDA finds good cause for the amendments to become effective on the date of publication of this action.

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 822

Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 10, 803, 812, and 822 are amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

■ 1. The authority citations for part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

■ 2. In § 10.80:

■ a. Remove the headings from paragraphs (b) and (d); and

■ b. Revise paragraph (h).

The revision reads as follows:

§ 10.80 Dissemination of draft Federal Register notices and regulations.

* * * * *

(h) In accordance with section 534 of the Federal Food, Drug, and Cosmetic Act, the Commissioner shall consult with interested persons and with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) before prescribing any performance standard for an electronic product. Accordingly, the Commissioner shall publish in the **Federal Register** an announcement when a proposed or final performance standard, including any amendment, is being considered for an electronic product, and any draft of any proposed or final standard will be furnished to an interested person upon request and may be discussed in detail.

* * * * *

PART 803—MEDICAL DEVICE REPORTING

■ 3. The authority citation for part 803 continues to read as follows:

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

■ 4. In § 803.19, revise paragraph (b) to read as follows:

§ 803.19 Are there exemptions, variances, or alternative forms of adverse event reporting requirements?

* * * * *

(b) If you are a manufacturer, importer, or user facility, you may request an exemption or variance from any or all of the reporting requirements in this part, including the requirements of § 803.12. You must submit the request to the Center for Devices and Radiological Health (CDRH) in writing at *MDRPolicy@fda.hhs.gov*. Your request must include information necessary to identify you and the device; a complete statement of the request for exemption, variance, or alternative reporting; and an explanation why your request is justified. If you are requesting an exemption from the requirement to submit reports to FDA in electronic format under § 803.12(a), your request should indicate for how long you will require this exemption.

* * * * *

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

■ 5. The authority citation for part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 360bbb–8b, 371, 372, 374, 379e, 379k–1, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

■ 6. In § 812.38, revise paragraph (b)(4) to read as follows:

§ 812.38 Confidentiality of data and information.

* * * * *

(b) * * *

(4) Notwithstanding paragraph (b)(2) of this section, FDA will make available to the public, upon request, the information in the IDE that was required to be filed in Docket Number FDA–1995–S–0036 in the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, for investigations involving an exception from informed consent under § 50.24 of this chapter. Persons wishing to request this information shall submit a request under the Freedom of Information Act.

* * * * *

■ 7. In § 812.47, revise paragraph (a) to read as follows:

§ 812.47 Emergency research under § 50.24 of this chapter.

(a) The sponsor shall monitor the progress of all investigations involving an exception from informed consent under § 50.24 of this chapter. When the sponsor receives from the IRB information concerning the public disclosures under § 50.24(a)(7)(ii) and (iii) of this chapter, the sponsor shall promptly submit to the IDE file and to Docket Number FDA–1995–S–0036 in the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, copies of the information that was disclosed, identified by the IDE number.

* * * * *

PART 822—POSTMARKET SURVEILLANCE

■ 8. The authority citation for part 822 continues to read as follows:

Authority: 21 U.S.C. 331, 352, 360i, 360l, 371, 374.

■ 9. In § 822.1, revise the introductory text and paragraphs (b) and (c) and add paragraph (d) to read as follows:

§ 822.1 What does this part cover?

This part implements section 522 of the Federal Food, Drug, and Cosmetic Act by providing procedures and requirements for postmarket surveillance of class II and class III devices that meet any of the following criteria:

* * * * *

(b) The device is intended to be implanted in the human body for more than 1 year;

(c) The device is intended to be used outside a user facility to support or sustain life. If you fail to comply with requirements that we order under section 522 of the Federal Food, Drug, and Cosmetic Act and this part, your device is considered misbranded under section 502(t)(3) of the Federal Food, Drug, and Cosmetic Act and you are in violation of section 301(q)(1)(C) of the Federal Food, Drug, and Cosmetic Act; or

(d) The device is expected to have significant use in pediatric populations.

■ 10. In § 822.4, revise the introductory text and paragraphs (b) and (c) and add paragraph (d) to read as follows:

§ 822.4 Does this part apply to me?

If we have ordered you to conduct postmarket surveillance of a medical device under section 522 of the Federal Food, Drug, and Cosmetic Act, this part applies to you. We have the authority to order postmarket surveillance of any class II or class III medical device, including a device reviewed under the licensing provisions of section 351 of the Public Health Service Act, that meets any of the following criteria:

* * * * *

(b) The device is intended to be implanted in the human body for more than 1 year;

(c) The device is intended to be used to support or sustain life and to be used outside a user facility; or

(d) The device is expected to have significant use in pediatric populations.

■ 11. In § 822.7, revise paragraph (a)(1) to read as follows:

§ 822.7 What should I do if I do not agree that postmarket surveillance is appropriate?

(a) * * *

(1) Requesting a meeting with the Director of the Office that issued the order for postmarket surveillance;

* * * * *

■ 12. Revise § 822.24 to read as follows:

§ 822.24 What are my responsibilities once I am notified that I am required to conduct postmarket surveillance?

You must submit your plan to conduct postmarket surveillance to us within 30 days from receipt of the order (letter) notifying you that you are required to conduct postmarket surveillance of a device. The manufacturer shall commence surveillance not later than 15 months after the day the order was issued.

Dated: March 15, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05657 Filed 3–20–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Maine State Plan for State and Local Government Employees; Approval of Plan Supplements and Certification of Completion of Developmental Steps

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notification of certification of the State Plan.

SUMMARY: The Maine Department of Labor, Bureau of Labor Standards submitted documentation attesting to the completion of all structural and developmental aspects of its State Plan for State and Local Government Employees as approved by OSHA. After extensive review of the submissions and opportunity for correction, the Maine State Plan (MEOSH) submitted updated and revised documents. OSHA is approving the revised State Plan, which documents the satisfactory completion of all structural and developmental aspects of Maine's approved State Plan, and is certifying this completion. This certification attests to the fact that the Maine State Plan now has in place those structural components necessary for an effective State Plan for State and Local Government Employees. (Enforcement of occupational safety and health standards with regard to private sector employers and employees in the State of Maine remains the responsibility of the U.S. Department of Labor, OSHA.)

DATES: Effective March 21, 2023.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Contact Frank Meilinger, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general and technical information: Contact Douglas J. Kalinowski, Director, OSHA Directorate of Cooperative and State Programs, U.S. Department of Labor; telephone (202) 693–2200; email: *kalinowski.doug@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the ''OSH Act''), 29 U.S.C. 667, provides that a state which desires to assume responsibility for the development and enforcement of occupational safety and health standards may submit for OSHA review and approval a State Plan for such development and enforcement. Regulations at 29 CFR part 1956 provide that a state may voluntarily submit a State Plan for the development and enforcement of occupational safety and health standards applicable only to employers and employees of the state and its political subdivisions. State and local government employers are excluded from Federal OSHA coverage under section 3(5) of the OSH Act.

Under these regulations, the Assistant Secretary of Labor for Occupational Safety and Health (''Assistant Secretary'') may approve a State Plan for State and Local Government Employees if the Plan provides for the development and enforcement of standards relating to hazards in employment covered by the Plan which are or will be at least as effective in providing safe and healthful employment and places of employment for public employees as standards promulgated and enforced by Federal OSHA under section 6 of the OSH Act, giving due consideration to differences between public and private sector employment. See 29 CFR 1956.2(a). Following initial approval, the state may begin enforcement of its safety and health standards in the public sector and receive up to 50 percent federal funding for the cost of Plan operations.

A State Plan for State and Local Government Employees may receive initial approval even though, at the time of submission, not all essential components of the Plan are in place. Pursuant to 29 CFR 1956.2(b), the Assistant Secretary may initially approve the submission as a ''developmental plan,'' and a schedule within which the state must complete all ''developmental steps'' within a three-year period is issued as part of the initial approval decision. 29 CFR part 1953 provides procedures for the review and approval of changes and progress in the development and implementation of the State Plan.

When the Assistant Secretary has reviewed and approved all developmental submissions and finds that the state has satisfactorily completed all developmental steps specified in the initial approval decision, a notice certifying such completion is published in the **Federal Register** (see 29 CFR 1956.23 and 1902.34). Certification attests to the structural completeness of the Plan but does not render judgment as to the adequacy or effectiveness of state performance.

II. State Plan History

The Bureau of Labor and Industry, now known as the Bureau of Labor Standards (Bureau), was established in 1873 as an activity of the Secretary of State. In 1971, Title 26 of the Maine Revised Statutes (M.R.S.; or alternatively referred to as M.R.S.A., in reference to the Maine Revised Statutes Annotated) was enacted, defining the power and duties of the Director of the Bureau under Chapter 3, Section 42. Chapter 6, Section 565 defines the powers and duties of the Board of Occupational Safety and Health (Board or BOSH), which approves the adoption of standards, and is an independent review authority for the review of contested cases. Since 1971, the Maine Department of Labor, Bureau of Labor Standards, Workplace Safety and Health Division (Division), has proposed standards for the Board's approval and performed inspections in state and local government workplaces (which includes state, county, and municipal employers) as outlined under the provisions of the state's existing enabling legislation.

In 2012, Maine began working on a State and Local Government State Plan and submitted a draft Plan to OSHA in February 2013. OSHA determined that the Maine statutes, as structured, and the proposed State Plan needed minor changes in order to meet the State and Local Government State Plan approval criteria in 29 CFR 1956. Amendments to M.R.S., Title 26 were proposed and enacted by the Maine Legislature and signed into law by the Governor in 2014. The amended legislation provides the basis for establishing a comprehensive occupational safety and health program applicable to the state and local government employees in the state. With this amended legislation in place, in August 2015, OSHA approved Maine as a developmental State Plan for State and Local Government Employees only.

In October 2020, MEOSH submitted a revised State Plan narrative (*i.e.,* an overall description of the State Plan and all its aspects) to OSHA indicating that it had completed all 10 steps in its developmental program. Upon review, OSHA determined that the Maine State Plan needed to adopt OSHA's recordkeeping and reporting rule (29 CFR part 1904) and amend its rulemaking procedures so that it could adopt OSHA's emergency temporary standards within 30 days of the **Federal Register** *Notice,* with an immediate effective date upon adoption. BOSH adopted 29 CFR part 1904 in November 2021, and the state legislature amended Title 26, Chapter 6, Section 565 to remove the requirement that ''rules shall not become effective sooner than 90 days after the date of adoption and promulgation'' in December 2021. This amendment enables MEOSH to adopt OSHA's emergency temporary standards within 30 days from the **Federal Register** *Notice,* to take effect immediately upon publication. BOSH also adopted Maine's statutory requirements for state and local government dive team operations (26 M.R.S.A. § 565), public sector firefighting operations (26 M.R.S.A. §§ 2101–2107), and driver training requirements for fire apparatuses (26 M.R.S.A. § 2107), and provided OSHA with the required comparison of the diving standard to the Federal standard.

III. Description of the Revised State Plan

The revised State Plan updates and documents all structural components of the Maine program. Each of the key component parts of the revised State Plan are described below. The documents described below are being approved in this notice.

A. The Plan Narrative and Appendices

The Maine Department of Labor is designated by Title 26 of M.R.S. as the sole agency responsible for administering and enforcing the state and local government employee protection program in Maine. The Maine Department of Labor, Bureau of Labor Standards is designated as the agency responsible for the State and Local Government Only State Plan.

The Plan narrative provides a general overview of MEOSH's legal authority, standards and variances, regulations, enforcement policies and procedures (the MEOSH Field Operations Manual (FOM)), voluntary compliance activities (including consultative services and training and outreach programs), occupational safety and health laboratory support services, personnel policies and procedures, recordkeeping and reporting requirements, budget, staffing, and funding, all of which, together with the supporting documents contained in various appendices, have been determined to provide authority which is ''at least as effective as'' that of the OSH Act and to meet the criteria and indices for plan approval contained in 29 CFR part 1956.

The State Plan appendices submitted to OSHA contain a variety of state

statutes and other documents related to the Maine State Plan. These include letters from the Maine Governor and Attorney General, the MEOSH FOM, inspection scheduling system, personnel policies, the MEOSH organizational chart, budget, and state job descriptions for all positions in the State Plan.

The appendices also contain the following state statutes and regulations: The Maine Administrative Procedure Act (Title 5, Chapter 375); regulations that incorporate 29 CFR parts 1903, 1904, 1905, 1908, 1910, 1926, and 1977; and regulations pertaining to minimum driver training requirements for fire apparatuses, occupational safety and health standards for public safety diving, and occupational safety and health requirements for firefighting in the public sector.

B. Legislation

The legislative authority establishing the Maine State Plan, and the respective occupational safety and health obligations of employers and employees, is found in Title 26, Chapters 1, 3, and 6 of the M.R.S.A. These provisions define the powers and duties of MEOSH, including authority to adopt occupational safety and health rules, right of entry, inspections, citations, proposed penalties, employee rights, variances, non-discrimination, recordkeeping and reporting, etc. The provisions further establish the duty of public employers to provide employment and a place of employment free from recognized hazards, to comply with the Maine Department of Labor's occupational safety and health rules, to report injuries and deaths, to inform employees of their protections and obligations, and to provide information on hazards in the workplace. Chapter 6 additionally establishes the duty for public employees to comply with all occupational safety and health rules applicable to their own actions and conduct.

MEOSH covers all state and local government employees of the state, which is defined by Title 26, Chapter 6, Section 563 to include employees of the state, a state agency, county, municipal corporation, school district, or other public corporation or political subdivision. Volunteers under the direction of a public employer or other public corporation or political subdivision are also covered. No employees of any political subdivision are excluded from the Plan. However, the definition of public employee does not extend to students, incarcerated individuals, or individuals committed in public institutions.

C. Standards

Under the Plan's enabling legislation, Title 26 of the M.R.S.A., the Maine Department of Labor has full authority to adopt standards and regulations through BOSH and enforce and administer all laws and rules protecting the safety and health of employees of the state and its political subdivisions. Title 26, Chapter 6, Section 565 provides that all rules adopted by BOSH must at a minimum conform to Federal standards of occupational safety and health so that the State Plan can continue as a Federally approved State and Local Government State Plan. The procedures for state adoption of Federal occupational safety and health standards include giving public notice, opportunity for public comment, and opportunity for a public hearing, in accordance with the Maine Administrative Procedure Act (M.R.S.A. Title 5, Chapter 375). MEOSH has adopted state standards identical to federal occupational safety and health standards as promulgated through August 31, 2022. The State Plan also provides that future OSHA standards and revisions will be adopted by the state within six months of Federal promulgation in accordance with the requirements at 29 CFR 1953.5. The Plan also provides for the adoption of Federal emergency temporary standards within 30 days of Federal promulgation, that can be made effective in the state immediately upon publication.

Under the Plan, the Maine Department of Labor (through BOSH) has the authority to adopt alternative or different occupational health and safety standards where no Federal standards are applicable to the conditions or circumstances or where standards that are more stringent than the Federal standards are deemed advisable. Such standards will be adopted in accordance with M.R.S.A. Title 26 and the Maine Administrative Procedure Act, which includes provisions allowing submissions from interested persons and the opportunity for interested persons to participate in any hearing for the development, modification, or establishment of standards. MEOSH has generally adopted identical standards to the Federal standards but does have a unique respirator protection standard and video display terminal standard. In addition, in November 2021, the Maine State Plan (through BOSH) adopted Maine's statutory requirements for state and local government dive team operations (26 M.R.S.A. § 565), public sector firefighting operations (26 M.R.S.A. §§ 2101–2107), and driver training requirements for fire apparatuses (26 M.R.S.A. § 2107).

D. Variances

Title 26, Chapter 6, Section 571 of the M.R.S.A. includes provisions for the granting of permanent and temporary variances from state standards to public employers in terms substantially similar to the variance provisions contained in the Federal OSH Act. The state provisions require employee notification of variance applications, as well as employee rights to participate in hearings held on variance applications. A variance may not be granted unless it is established that adequate protection is afforded employees under the terms of the variance.

On June 1, 2018, MEOSH (through BOSH) adopted, where applicable to public employees, the regulations at 29 CFR part 1905, establishing the policies and procedures for variances.

E. Employee Discrimination Protection

Title 26, Chapter 6, Section 570 of the M.R.S.A. provides that a person cannot discharge or in any manner discriminate against an employee because that employee has filed a complaint alleging an occupational safety or health hazard, has testified or is about to testify in any proceeding relating to employee safety and health, or has exercised any right under chapter 6 of Title 26.

Section 570 further provides that an employee who believes that they have been discharged or otherwise discriminated against in violation of this section may, within 30 days after the alleged violation occurs, file a complaint with the Director of the Bureau, alleging discrimination. If, upon investigation, the Director determines that the provisions of this chapter have been violated, the Director shall bring an action in Superior Court for all appropriate relief, including rehiring or reinstatement of the employee to their former position with back pay. Within 90 days of the receipt of a complaint filed under this section, the Director shall notify the complainant of the Director's determination.

On June 1, 2018, MEOSH (through BOSH) adopted, where applicable to public employees, the regulations at 29 CFR part 1977, establishing the policies and procedures for addressing discrimination against employees.

F. Inspections and Enforcement

Title 26, Chapter 3, Sections 44 and 50 of the M.R.S.A provide for inspections of covered workplaces, including inspections in response to employee complaints, by the Director of the Bureau. If a determination is made

that an employee complaint does not warrant an inspection, the complainant will be notified in writing of such determination. The complainant will be notified of the results of any inspection in writing and provided a copy of any citation that is issued. Employee complainants may request that their names not be revealed.

Title 26, Chapter 3, Section 44a of the M.R.S.A. provides the opportunity for employer and employee representatives to accompany a Bureau of Labor Standards inspector for the purpose of aiding the inspection. Where there is no authorized employee representative, the inspectors are required to consult with a reasonable number of employees concerning matters of safety and health in the workplace.

Through Title 26, Chapter 3, Sections 44 and 45 of the M.R.S.A., the Plan provides for notification to employees of their protections and obligations under the Plan by such means as a state poster, required posting of notices of a violation, etc.

Section 44 also authorizes the Director of the Bureau to issue rules requiring employers to maintain accurate records relating to occupational safety and health. Information on employee exposure to regulated agents, access to medical and exposure records, and provision and use of suitable protective equipment is provided through state standards.

Title 26, Chapter 3, Section 49 of the M.R.S.A. provides that the Director may petition the Superior Court to restrain any conditions or practices in any workplace subject to Section 45 in which such a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the danger could be eliminated through the enforcement process.

Title 26, Chapter 6, Section 566 of the M.R.S.A. authorizes the Director of the Bureau or their representatives to perform any necessary inspections or investigations. The Bureau designates the Division of Workplace Safety and Health to carry out these provisions. Title 26, Chapter 3, Section 44 provides that the Director of the Bureau has the right to inspect and investigate during regular working hours. The inspectors are provided the right of entry without delay and at reasonable times. If the public employer refuses entry or hinders the inspection process in any way, the inspector has the right to terminate the inspection and initiate the compulsory legal process and/or obtain a warrant for entry. The inspector has the right to interview all parties and review records as they relate directly to the inspection.

Title 26, Chapter 3, Section 46 prohibits advance notice of inspections. Advance notice of any inspection, without permission of the Bureau Director, is subject to a penalty of not less than $500 or more than $1,000 or by imprisonment for not more than 6 months, or both. Criminal penalties may also be imposed under the Maine criminal code on any person who knowingly makes a false statement under oath or affirmation; who knowingly makes a written false statement on a form bearing notification by statute or regulation to the effect that false statements made therein are punishable; or who knowingly makes a written false statement with the intent to deceive a public servant in the performance of their official duties. Thus, any employer who makes any false statement in any application, record, report, plan, or other document filed or required to be maintained by the State Plan may be in violation of the Maine criminal code and punished thereunder.

Title 26, Chapter 3, Section 45 establishes the authority and general procedures for the Director of the Bureau to promptly notify public employers and employees of violations, abatement requirements, and to compel compliance. If a Bureau inspector finds that a violation of a safety and health standard exists, they will issue a written citation to the employer with reasonable promptness. Section 45 provides that when an inspection of an establishment has been made, and the Director of the Bureau has issued a citation, the employer shall post such citation or a copy thereof at or near the location where the violation occurred. Each citation shall be in writing; describe with particularity the nature of the violation and include a reference to the provision of the statute, standard, rule, regulation, or order alleged to have been violated; and fix a reasonable time for the abatement of the violation.

Title 26, Chapter 3, Section 46 contains authority for a system of monetary penalties. Monetary penalties are required to be issued for serious citations and for violations of the posting requirements, up to $1,000 for each such violation. The Director of the Bureau has discretionary authority for civil penalties of up to $1,000 per day the violation continues for repeat and willful violations. Other-than-serious violations may be assessed a penalty of up to $1,000 per violation, and failure-to-correct violations may be assessed a penalty of up to $1,000 per day. In addition, criminal penalties can be issued to public employers who willfully violate any standard, rule, or order. An alternative enforcement mechanism that includes administrative orders may be used in limited circumstances.

G. Compliance Manual

MEOSH has adopted Federal OSHA's revised FOM, CPL 02–00–164, with some exceptions, which provides guidance to MEOSH compliance staff concerning general staff responsibilities, pre-inspection procedures (including inspection scheduling and priorities, complaints and other unprogrammed inspections, and inspection preparation), inspection procedures (including conduct of the inspection, opening conference, closing conference, physical examination of the workplace, follow-up inspections, fatality/catastrophe investigations, imminent danger investigations, and construction inspections), inspection documentation (including types of violations, violations of the general duty clause, writing citations, and grouping/combining violations), and post-inspection procedures (including abatement, citations, penalties, and post-citation processes). MEOSH has adopted different FOM provisions for Chapter 6, penalty amounts, and for the provisions in Chapter 7 related to informal conference procedures. And MEOSH does not follow Federal OSHA's revised FOM Chapters 1, 8, 9, 10, and 13–17, or specific subsections of Chapters 2, 3, 4, and 5, which are inapplicable to MEOSH's program. MEOSH also uses the OSHA Technical Manual (TED 01–00–015), which replaced the former Industrial Hygiene Manual, as guidance for its staff. The Maine Department of Labor, Workplace Safety and Health Division has adopted the OSHA Whistleblower Investigations Manual (WIM) (CPL 02–03–011 04/29/2022), except for the sections on appeals and settlement agreements. MEOSH has an internal policy for appeals and settlement agreements, which is contained in Appendix D of the State Plan documents submitted to OSHA.

H. Review Procedures

Title 26, Chapter 6, Section 568 of the M.R.S.A. and Code of Maine Rules (CMR) 12–179, Chapter 1 establish the authority and general procedures for employer contests of violations alleged by the state, penalties and sanctions, and abatement requirements. State and local government employers or their representatives who receive a citation, a proposed assessment of penalty, or a notification of failure to correct a violation may, within 15 working days from receipt of the notice, request in writing a hearing before BOSH on the

citation, notice of penalty, or abatement period. Any public employee or representative thereof may, within 15 working days of the issuance of a citation, file a request in writing for a hearing before BOSH on whether the period of time fixed in the citation for abatement is unreasonable.

All interested parties are allowed to participate in the hearing and introduce evidence. BOSH shall affirm, modify, or vacate the citation or proposed penalty or direct other appropriate relief. Any party adversely affected by a final order or determination by the BOSH has the right to appeal and obtain judicial review by the Superior Court.

The Director of the Bureau will remain responsible for the enforcement process, including the issuance of citations and penalties, and their defense, if contested. Informal reviews can be held at the division management level prior to a formal contest.

I. Budget and Personnel

The Plan includes the FY 2023 grant application under section 23(g) of the OSH Act, which includes a current organizational chart and detailed information on staffing and funding. The state has given satisfactory assurances of adequate funding to support the Plan. In FY 2023, the State Plan was funded at $538,100 in Federal section 23(g) funds, $538,100 in matching state funds, and $102,315 in 100% state funds, for a total Federal and state contribution of $1,178,515. The state has given satisfactory assurance that it will meet the staffing requirements of 29 CFR 1956.10. OSHA considers MEOSH's current staffing and funding levels to be adequate and appropriate.

J. Records and Reports

The Plan provides that state and local government employers in Maine will maintain appropriate records and make timely reports on occupational injuries and illnesses in a manner substantially identical to and ''at least as effective as'' that required for private sector employers under Federal OSHA. MEOSH has assured that it will continue its participation in the Bureau of Labor Statistics Annual Survey of Injuries and Illnesses in the public sector. The Plan also contains assurances that it will provide reports to OSHA in such form as the Assistant Secretary may require and that MEOSH will continue to use the OSHA Information System (OIS).

MEOSH's agency work rule on Recording Occupational Injuries and Illnesses in the Public Sector (ME CMR 12–179, Chapter 6) has incorporated by reference OSHA's recordkeeping and reporting regulations in 29 CFR part 1904. Title 26, Chapter 1, Section 2 and Chapter 3 of the M.R.S.A. impose parallel requirements on state and local government employers to maintain accurate records of and to make reports on work-related deaths, injuries, and illnesses. Such records are available to any state agency requiring them and are held confidential. Where there is overlap between the Maine statute provisions and the Chapter 6 agency work rule, employers must comply with whichever requirement is more protective.

K. Voluntary Compliance Programs

MEOSH has adopted, where applicable, 29 CFR part 1908, establishing requirements for a state and local government consultation program. The MEOSH consultation program generally follows OSHA's Consultation Policies and Procedures Manual, CSP 02–00–004.

The Bureau conducts educational programs for state and local government employees specifically designed to meet the regulatory requirements and needs of the state or local government employer. Consultations, including site visits, compliance assistance, and training classes, are individualized for each worksite and tailored to the employer's concerns. Training topics include, but are not limited to, bloodborne pathogens, hazard communication, confined space entry, trenching/shoring, recordkeeping, slips/trips/falls, laboratory safety, lockout/tagout, and electrical safety. The Bureau has also developed a program known as the Safety and Health Award for Public Employers (SHAPE) to recognize state and local government employers with an excellent safety and health program. This program is like OSHA's Safety and Health Achievement Recognition Program (SHARP).

IV. Completion of Developmental Steps

With the approval of the revised State Plan in today's action, all developmental steps specified in the August 5, 2015, notice of initial approval of the Maine State Plan for State and Local Government Employees (80 FR 46487) and other relevant steps, have been successfully completed and approved as follows:

In accordance with developmental step (1), MEOSH provided a comparison of ME CMR 12–179, Chapter 6 to 29 CFR part 1904. At the direction of OSHA, MEOSH subsequently adopted revisions to ME CMR 12–179, Chapter 6 to incorporate 29 CFR part 1904 and ensure that the State Plan's recordkeeping and reporting obligations are substantially identical to the Federal requirements. This developmental step was completed in November 2021. The revised state rule is approved by the Assistant Secretary in today's notice.

In accordance with developmental step (2), MEOSH adopted regulations equivalent to 29 CFR part 1905. This developmental step was completed in July 2019 and the changes are approved by the Assistant Secretary as of today's notice.

In accordance with developmental step (3), MEOSH adopted regulations equivalent to 29 CFR part 1977. This developmental step was completed in July 2019 and the changes are approved by the Assistant Secretary as of today's notice.

In accordance with developmental step (4), the State of Maine enacted legislation revising 26 M.R.S.A. §§ 2 and 44. This developmental step was completed in June 2015 and the changes are approved by the Assistant Secretary as of today's notice.

In accordance with developmental step (5), MEOSH provided a comparison of alternative standards that Maine has adopted to Federal standards. This step was completed in November 2021 and the state standards are approved by the Assistant Secretary as of today's notice.

In accordance with developmental step (6), MEOSH provided an outline of procedures for the on-site public sector consultation program by adopting 29 CFR part 1908. This step was completed in July 2019 and the state rule is approved by the Assistant Secretary as of today's notice.

In accordance with developmental step (7), MEOSH developed a 5-year strategic plan and an annual performance plan. This step was most recently updated as of October 1, 2020, when MEOSH implemented its most current 5-year strategic plan and as of August 1, 2022, when MEOSH submitted its most recent annual performance plan for FY 2023. These plans are approved by the Assistant Secretary as of today's notice.

In accordance with developmental step (8), MEOSH reviewed and revised its FOM. The MEOSH FOM generally follows federal OSHA's revised FOM, CPL 02–00–164, with the primary exceptions of Chapters 6 and 7. The MEOSH FOM, in conjunction with the applicable Maine statutes, will ensure inspections are at least as effective as 29 CFR part 1903. The MEOSH FOM will be reviewed on an annual basis. This developmental step was completed in July 2020 and the MEOSH FOM is approved by the Assistant Secretary as of today's notice.

In accordance with developmental step (9), MEOSH transitioned to the OIS. This developmental step was completed in September 2015 and is approved by the Assistant Secretary as of today's notice.

In accordance with developmental step (10), MEOSH determined, in conjunction with Federal OSHA, that adoption of OSHA's maritime standards at 29 CFR parts 1915, 1917, and 1918 was not required based on the type of work performed in Maine's state and local government agencies. This determination is approved by the Assistant Secretary as of today's notice.

V. Decision

A. Approval of Plan Supplements

After careful review, opportunity for state correction, and subsequent revision, the plan supplements constituting a revised Maine State Plan for State and Local Government Employees and its components described above are found to be in substantial conformance with comparable Federal provisions and the requirements of 29 CFR part 1956 and are hereby approved under 29 CFR part 1953 as providing a revised State Plan for the development and enforcement of standards which is ''at least as effective as'' the Federal program, as required by section 18 of the OSH Act and 29 CFR part 1956. The right to reconsider this approval of the revised State Plan supplements is reserved should substantial objections or other information regarding any change to components of the Plan become available to the Assistant Secretary.

B. Certification

With the approval of a revised State Plan as noted above, all developmental steps have now been successfully completed, documented, and approved. In accordance with 29 CFR 1956.23, the Maine State Plan for State and Local Government Employees is certified as having successfully completed all developmental steps. This certification attests to the structural completeness of the State Plan and that it has all the necessary authorities and procedures to provide ''at least as effective'' standards, enforcement, and compliance assistance to the employees of the State of Maine and its political subdivisions. This action renders no judgment as to the effectiveness of the State Plan in actual operations.

VI. Location of Basic State Plan Documentation

Copies of the revised Maine State Plan for State and Local Government Employees are available on the State Plan's website or upon request. Contact the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 25 New Sudbury Street, Room E–340, Boston, Massachusetts 02203.

Components of the Maine State Plan, including the MEOSH FOM, recordkeeping regulations and instructions, complaint forms, and other program information are posted on the MEOSH website at: *https://www.maine.gov/labor/workplace_safety/publicsector.shtml.*

MEOSH is administered by the Maine Department of Labor, Bureau of Labor Standards, Workplace Safety and Health Division. To obtain more information, visit *https://www.maine.gov/labor/bls/,* call (207) 623–7900, or email *mdol@maine.gov.*

Information on MEOSH laws and regulations can be found at: *https://www.maine.gov/labor/workplace_safety/publicsector.shtml.*

The state Administrative Procedure Act can be found at: *https://legislature.maine.gov/statutes/5/title5ch375sec0.html.*

Electronic copies of this **Federal Register** *Notice* and the related press release are available on OSHA's website at: *http://www.osha.gov.*

More information on the Maine State Plan can be found on OSHA's Office of State Programs website at: *https://www.osha.gov/stateplans/me.*

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20001 authorized the preparation of this document under the authority specified by section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 8–2020 (85 FR 58393 (Sept. 18, 2020)), and 29 CFR part 1956.

Signed in Washington, DC, March 15, 2023.

Douglas L. Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–05724 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

Office of the Secretary of the Treasury

31 CFR Parts 16, 27, and 50

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Departmental Offices Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') publishes this final rule to adjust its civil monetary penalties (''CMPs'') for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as ''the Act''). This rule adjusts CMPs within the jurisdiction of two components of Departmental Offices for 2022 and 2023.

DATES: *This rule is effective* March 21, 2023.

FOR FURTHER INFORMATION CONTACT: For information regarding the Terrorism Risk Insurance Program's CMPs, contact Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–2922 (not a toll-free number), or Sherry Rowlett, Program Policy Analyst, Federal Insurance Office, at (202) 622–1890 (not a toll free number). Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

For information regarding the Treasury-wide CMPs, contact Richard Dodson, Senior Counsel, General Law, Ethics, and Regulation, 202–622–9949.

SUPPLEMENTARY INFORMATION:

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (''the Inflation Adjustment Act''), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74) (''the 2015 Act''), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, without needing to provide notice and

the opportunity for public comment required by 5 U.S.C. 553. This rule constitutes the Department's 2022 and 2023 annual adjustment. The 2015 Act provides that any increase in a CMP shall apply to CMPs that are assessed after the date the increase takes effect, regardless of whether the underlying violation predated such increase.[1]

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act and the Office of Management and Budget guidance required by the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers (''CPI–U'') for the October preceding the date of the adjustment and the prior year's October CPI–U. As set forth in Office of Management and Budget (OMB) Memorandum M–22–07 of December 15, 2021, the adjustment multiplier for 2022 is 1.06222. Additionally, as set forth in OMB Memorandum M–23–05 of December 15, 2022, the adjustment multiplier for 2023 is 1.07745. In order to complete the 2022 and 2023 annual adjustments, each current CMP is multiplied by the 2022 and 2023 adjustment multipliers. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of $1.

With regard to the CMPs assessed under 31 U.S.C. 3802(a), the penalty assessment for 2021 ($8,212) is multiplied by 1.06222, resulting in a penalty of $8,723 for 2022. Multiplying $8,723 by 1. 07745 results in a penalty of $9,399 for 2023.

With regard to the CMPs assessed under 31 U.S.C. 333(c), the first penalty under this section was adjusted to $8,212 in 2021. This amount is multiplied by 1.06222, resulting in a penalty of $8,723 for 2022. Multiplying $8,723 by 1. 07745 results in a penalty of $9,399 for 2023. The second penalty under this section was adjusted to $41,056 in 2021. Multiplying this amount by 1.06222 results in a penalty of $43,611 for 2022. Multiplying $43,611 by 1.07745 results in a penalty of $46,989 for 2023.

Finally, with regard to the CMP assessed under Section 104 of Title I, Public Law 107–297, as amended, the penalty assessment for 2021 ($1,436,220) is multiplied by 1.06222, resulting in a penalty of $1,525,582 for 2022. Multiplying $1,525,582 by 1.07745 results in a penalty of $1,643,738 for 2023.

Procedural Matters

1. Administrative Procedure Act

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies to make annual adjustments for inflation to CMPs, without needing to provide notice and the opportunity for public comment and a delayed effective date required by 5 U.S.C. 553. Additionally, the methodology used for adjusting CMPs for inflation is provided by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice, an opportunity for public comment, and a delayed effective date are not required for this rule.

2. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

3. Executive Order 12866

This rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

4. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

List of Subjects

31 CFR Part 16

Administrative Practice and Procedure, Claims, Fraud, Penalties.

31 CFR Part 27

Administrative Practice and Procedure, Penalties.

31 CFR Part 50

Insurance, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, parts 16, 27, and 50 of title 31 of the Code of Federal Regulations are amended as follows:

PART 16—REGULATIONS IMPLEMENTING THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 31 U.S.C. 3801–3812.

■ 2. Amend § 16.3 by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 16.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $9,399 for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Includes or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the content of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $9,399 for each such statement.

* * * * *

PART 27—CIVIL PENALTY ASSESSMENT FOR MISUSE OF DEPARTMENT OF THE TREASURY NAMES, SYMBOLS, ETC.

■ 3. The authority citation for part 27 continues to read as follows:

Authority: 31 U.S.C. 321, 333.

■ 4. Amend § 27.3 by revising paragraph (c) to read as follows:

§ 27.3 Assessment of civil penalties.

* * * * *

(c) *Civil penalty.* An assessing official may impose a civil penalty on any person who violates the provisions of paragraph (a) of this section. The amount of a civil monetary penalty shall not exceed $9,399 for each and every use of any material in violation of paragraph (a), except that such penalty shall not exceed $46,989 for each and every use if such use is in a broadcast or telecast.

* * * * *

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 5. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322, as

[1] However, the increased CMPs apply only with respect to underlying violations occurring after the date of enactment of the 2015 Act, *i.e.,* after November 2, 2015.

amended by Pub. L. 109–144, 119 Stat. 2660, Pub. L. 110–160, 121 Stat. 1839, Pub. L. 114–1, 129 Stat. 3, and Pub. L. 116–94, 133 Stat. 2534 (15 U.S.C. 6701 note); Pub. L. 114–74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note); Pub. L. 116–94, Div. I, Title V, § 501, 133 Stat. 3026.

■ 6. Amend § 50.83 by revising paragraph (a) to read as follows:

§ 50.83 Adjustment of civil monetary penalty amount.

(a) *Inflation adjustment.* Any penalty under the Act and these regulations may not exceed the greater of $1,643,738 and, in the case of any failure to pay, charge, collect or remit amounts in accordance with the Act or these regulations, such amount in dispute.

* * * * *

Kayla Arslanian,

Executive Secretary.

[FR Doc. 2023–05769 Filed 3–20–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Determination

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a determination.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a sector determination issued pursuant to an April 15, 2021 Executive order. The determination was previously issued on OFAC's website.

DATES: The Determination Pursuant to Section 1(a)(i) of Executive Order 14024 was issued on February 24, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On April 15, 2021, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued Executive Order (E.O.) 14024 (86 FR 20249, April 19, 2022). Among other prohibitions, section 1(a)(i) of E.O. 14024 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, or by the Secretary of State, in consultation with the Secretary of the Treasury, to operate or have operated in the technology sector or the defense and related material sector of the Russian Federation economy, or any other sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State. On February 24, 2023, pursuant to delegated authority, the Director of OFAC, in consultation with the Department of State, determined that the prohibitions in section 1(a)(i) of E.O. 14024 shall apply to the metals and mining sector of the Russian Federation economy.

The determination took effect on February 24, 2023. The text of the determination is below.

OFFICE OF FOREIGN ASSETS CONTROL

Determination Pursuant to Section 1(a)(i) of Executive Order 14024

Metals and Mining Sector of the Russian Federation Economy

Section 1(a)(i) of Executive Order (E.O.) 14024 of April 15, 2021 (''Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation'') imposes economic sanctions on any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, or the Secretary of State, in consultation with the Secretary of the Treasury, to operate or have operated in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

To further address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States described in E.O. 14024, and in consultation with the Department of State and pursuant to 31 CFR 587.802, I hereby determine that section 1(a)(i) of E.O. 14024 shall apply to the metals and mining sector of the Russian Federation economy. Any person determined, pursuant to section 1(a)(i) of E.O. 14024, to operate or have operated in this sector shall be subject to sanctions pursuant to section 1(a)(i).

This determination shall take effect on February 24, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

February 24, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–05645 Filed 3–20–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 8E, 58, and 59

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 8E, 58, and 59, each of which was previously made available on OFAC's website.

DATES: GLs 8E, 58, and 59 were issued on December 15, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On December 15, 2022, OFAC issued GLs 8E, 58, and 59 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. Each GL was made available on OFAC's

website (*www.treas.gov/ofac*) when it was issued. GL 8E had an expiration date of May 16, 2023, but was superseded by the issuance of GL 8F on February 24, 2023. GLs 58 and 59 have an expiration date of March 15, 2023. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 8E

Authorizing Transactions Related to Energy

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving one or more of the following entities that are related to energy are authorized, through 12:01 a.m. eastern daylight time, May 16, 2023:

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company;

(6) Joint Stock Company Alfa-Bank;

(7) Public Joint Stock Company Rosbank;

(8) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest; or

(9) the Central Bank of the Russian Federation.

(b) For the purposes of this general license, the term ''related to energy'' means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 1A under E.O. 14024, *Prohibitions Related to Certain Sovereign Debt of the Russian Federation;*

(2) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(3) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation; or

(4) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective December 15, 2022, General License No. 8D, dated November 10, 2022, is replaced and superseded in its entirety by this General License No. 8E.

Note to General License No. 8E. This authorization is valid until May 16, 2023 unless renewed.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: December 15, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 58

Authorizing the Wind Down and Rejection of Transactions Involving Public Joint Stock Company Rosbank

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of transactions involving Public Joint Stock Company Rosbank, or any entity in which Public Joint Stock Company Rosbank owns, directly or indirectly, a 50 percent or greater interest (''Rosbank entities''), are authorized through 12:01 a.m. eastern daylight time, March 15, 2023, provided that any payment to a Rosbank entity is made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(b) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to reject, rather than block, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the processing of funds involving one or more Rosbank entities as an originating, intermediary, or beneficiary financial institution, through 12:01 a.m. eastern daylight time, March 15, 2023.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

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

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

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: December 15, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 59

Authorizing Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Public Joint Stock Company Rosbank

(a) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the divestment or transfer, or the facilitation of the divestment or transfer, of debt or equity of Public Joint Stock Company Rosbank (Rosbank), or any entity in which Rosbank owns, directly or indirectly, a 50 percent or greater interest (''covered debt or equity''), to a non-U.S. person are authorized through 12:01 a.m. eastern daylight time, March 15, 2023.

(b) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity that were placed prior to 4:00 p.m. eastern standard time, December 15,

2022, are authorized through 12:01 a.m. eastern daylight time, March 15, 2023.

(c) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern standard time, December 15, 2022, that (i) include a blocked person described in paragraph (a) of this general license as a counterparty or (ii) are linked to covered debt or equity are authorized through 12:01 a.m. eastern daylight time, March 15, 2023, provided that any payments to a blocked person are made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(d) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, covered debt or equity, other than purchases of or investments in covered debt or equity ordinarily incident and necessary to the divestment or transfer of covered debt or equity as described in paragraph (a) of this general license.

(e) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

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

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

Andrea M. Gacki,
Director, Office of Foreign Assets Control.

Dated: December 15, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–05649 Filed 3–20–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 8F, 13D, 60, and 61

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing four general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 8F, 13D, 60, and 61, each of which were previously made available on OFAC's website.

DATES: GLs 8F, 13D, 60, and 61 were issued on February 24, 2023. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On February 24, 2023, OFAC issued GLs 8F, 13D, 60, and 61 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GLs 8F and 13D superseded GLs 8E and 13C, respectively. Each GL was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 8F

Authorizing Transactions Related to Energy

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving one or more of the following entities that are related to energy are authorized, through 12:01 a.m. eastern daylight time, May 16, 2023:

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company;

(6) Joint Stock Company Alfa-Bank;

(7) Public Joint Stock Company Rosbank;

(8) Bank Zenit Public Joint Stock Company;

(9) Bank Saint-Petersburg Public Joint Stock Company;

(10) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest; or

(11) the Central Bank of the Russian Federation.

(b) For the purposes of this general license, the term ''related to energy'' means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 1A under E.O. 14024, *Prohibitions Related to Certain Sovereign Debt of the Russian Federation;*

(2) The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(3) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation; or

(4) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective February 24, 2023, General License No. 8E, dated December 15, 2022, is replaced and superseded in its entirety by this General License No. 8F.

Note to General License No. 8F. This authorization is valid until May 16, 2023 unless renewed.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 13D

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

(a) Except as provided in paragraph (b) of this general license, U.S. persons, or entities owned or controlled, directly or indirectly, by a U.S. person, are authorized to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, or certifications, to the extent such transactions are prohibited by Directive 4 under Executive Order 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons or entities, through 12:01 a.m. eastern daylight time, June 6, 2023.

(b) This general license does not authorize:

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

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

(c) Effective February 24, 2023, General License No. 13C, dated November 21, 2022, is replaced and superseded in its entirety by this General License No. 13D.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 60

Authorizing the Wind Down and Rejection of Transactions Involving Certain Entities Blocked on February 24, 2023

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of transactions involving one or more of the following blocked persons (collectively, ''the Blocked Entities'') are authorized through 12:01 a.m. eastern daylight time, May 25, 2023, provided that any payment to a Blocked Entity is made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR):

(1) Bank Saint-Petersburg Public Joint Stock Company;

(2) Bank Zenit Public Joint Stock Company;

(3) Joint Stock Commercial Bank Primorye;

(4) Public Joint Stock Company Bank Uralsib;

(5) Joint Stock Company Commercial Bank Lanta Bank;

(6) SDM-Bank Public Joint Stock Company;

(7) Public Joint Stock Company Stock Commercial Bank Metallurgical Investment Bank;

(8) Public Joint Stock Company Ural Bank for Reconstruction And Development;

(9) Credit Bank of Moscow Public Joint Stock Company; or

(10) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to reject, rather than block, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the processing of funds involving one or more of the Blocked Entities as an originating, intermediary, or beneficiary financial institution, through 12:01 a.m. eastern daylight time, May 25, 2023.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

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

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the Blocked Entities described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 61

Authorizing Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Certain Entities Blocked on February 24, 2023

(a) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the divestment or transfer, or the facilitation of the divestment or transfer, of debt or equity of the following blocked persons (''covered debt or equity'') to a non-U.S. person are authorized through 12:01 a.m. eastern daylight time, May 25, 2023:

(1) Bank Saint-Petersburg Public Joint Stock Company;

(2) Bank Zenit Public Joint Stock Company;

(3) Public Joint Stock Company Bank Uralsib;

(4) Joint Stock Company Commercial Bank Lanta Bank;

(5) SDM-Bank Public Joint Stock Company;

(6) Public Joint Stock Company Stock Commercial Bank Metallurgical Investment Bank; or

(7) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity that were placed prior to 4:00 p.m. eastern standard time, February 24, 2023, are authorized through 12:01 a.m. eastern daylight time, May 25, 2023.

(c) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern standard time, February 24, 2023, that (i) include a blocked person described in paragraph (a) of this general license as a counterparty or (ii) are linked to covered debt or equity are authorized through 12:01 a.m. eastern daylight time, May 25, 2023, provided that any payments to a blocked person are made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(d) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, covered debt or equity, other than purchases of or investments in covered debt or equity ordinarily incident and necessary to the divestment or transfer of covered debt or equity as described in paragraph (a) of this general license.

(e) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–05648 Filed 3–20–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2022–0892]

RIN 1625–AA09

Drawbridge Operation Regulation: Housatonic River, Stratford, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the US 1 Bridge across the Housatonic River, mile 3.5, at Stratford, CT. This action is necessary to allow for an unexpected delay in construction material delivery related to the COVID–19 pandemic. This temporary final rule is necessary to allow the bridge owner to complete the remaining replacements and repairs.

DATES: This temporary final rule is effective from March 21, 2023 through 12:01 a.m. on July 1, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number (USCG–2022–0892) in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Stephanie E. Lopez, Coast Guard Bridge Management Specialist; telephone (212) 514–4335, email *Stephanie.E.Lopez@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
TFR Temporary Final Rule
OMB Office of Management and Budget
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final 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), 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 unnecessary.

On 19 April 2021, the Coast Guard issued a General Deviation which allowed the bridge owner to deviate from the current operating schedule in 33 CFR 117.207(a) to repair the bridge. This deviation letter can be found in this Docket as supporting documentation. Due to delays in procuring materials, the project ran past the approved deviation. The work cannot stop and needs to continue in order to bring the bridge back to normal operation. Therefore, there is lack of sufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the **Federal Register**. For reasons presented above, delaying the effective date of this rule would be impracticable and contrary to the public interest given the need to complete repairs to the bridge which are already underway and preventing full operation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the US 1 Bridge across the Housatonic River, mile 3.5, Stratford, Connecticut. The US 1 Bridge has a vertical clearance in the closed position of 32 feet at mean high water.

The existing drawbridge regulation is listed at 33 CFR 117.207(a). The Connecticut Department of Transportation, the bridge owner, has requested this modification as

additional time is required to complete the bridge rehabilitation.

The waterway is transited by seasonal recreational traffic as well as commercial fishing charters. Coordination with known waterway users has indicated no objection to the proposed schedule of the draw. During the temporary final rule the bridge will be operating under single leaf operations. Mariners can transit through the operating leaf.

IV. Discussion of the Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the US 1 Bridge across the Housatonic River, mile 3.5, Stratford, Connecticut. The rule is necessary to accommodate the completion of the bridge rehabilitation. This rule allows the bridge to operate under single leaf openings from November 30, 2022 until June 30, 2023.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders.

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, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge through the alternate operating leaf.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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 bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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 Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has 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 promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Stay § 117.207(a) from 12:01 a.m. March 21, 2023 through 12:01 a.m. on July 1, 2023.

■ 3. Amend § 117.207, by adding temporary paragraphs (a)(1) and reserved paragraph (a)(2) to read as follows:

§ 117.207 Housatonic River.

(a) * * *

(1) The draw shall operate on single leaf operations from November 30, 2022 to June 30, 2023.

(2) [Reserved]

* * * * *

Dated: March 13, 2023.

J.W. Mauger,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2023–05428 Filed 3–20–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0171]

RIN 1625–AA00

Safety Zone; Corpus Christi Bay, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters in the Corpus Christi Bay. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by an acrobatic airshow near the Corpus Christi Bayfront, Corpus Christi, Texas. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective from 11:30 a.m. on May 4, 2023, through 4 p.m. on May 7, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *CCWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by the airshow and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with the airshow from 11:30 a.m. through 4 p.m. each day, starting on May 4, 2023 through May 7, 2023, will be a safety concern for anyone within the waters of the Corpus Christi Bay on an area of 1.25 sq. miles on the following box; 27°49′2.78″ N, 97°23′16.1″ W to 27°47′3.69″ N, 97°23′14.62″ W to 27°47′5.46″ N, 97°22′41.02″ W to 27°49′2.73″ N, 97°22′42.97″ W to 27°49′2.78″ N, 97°23′16.10″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while the airshow takes place in the Corpus Christi Bay.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 11:30 a.m. through 4 p.m. each day, starting on May 4, 2023 through May 7, 2023. The safety zone will encompass certain navigable waters of the Corpus Christi Bay and is defined by a 1.25 sq. miles box. The regulated area encompasses the following coordinates; 27°49′2.78″ N, 97°23′16.1″ W to 27°47′3.69″ N, 97°23′14.62″ W to 27°47′5.46″ N, 97°22′41.02″ W to 27°49′2.73″ N, 97°22×42.97″ W to 27°49′2.78″ N, 97°23′16.10″ W. The airshow display will take place in waters of the Corpus Christi Bay. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone will be enforced for a short period of 4.5 hours, each day. The zone is limited to 1.25 sq. miles box in the navigable waters of the Corpus Christi Bay. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the temporary safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f) and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of the Corpus Christi Bay in a zone defined by 1.25 sq. miles on the following box; 27°49′2.78″ N, 97°23′16.1″ W to 27°47″3.69″ N, 97°23′14.62″ W to 27°47′5.46″ N, 97°22′41.02″ W to 27°49′2.73″ N, 97°22′42.97″ W to 27°49′2.78″ N, 97°23′16.10″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by an airshow in the waters of the Corpus Christi Bay. 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 the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00171.1, Revision No. 01.3.

■ 2. Add § 165.T08–0171 to read as follows:

§ 165.T08–0171 Safety Zone; Corpus Christi Bay, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Corpus Christi Bay encompassed by a 1.25 sq. miles on the following box; 27°49′2.78″ N, 97°23′16.1″ W to 27°47″3.69″ N, 97°23′14.62″ W to 27°47′5.46″ N, 97°22′41.02″ W to 27°49′2.73″ N, 97°22′42.97″ W to 27°49′2.78″ N, 97°23′16.10″ W.

(b) *Effective period.* This section is effective from 11:30 a.m. on May 4, 2023, through 4 p.m. on May 7, 2023. It is subject to enforcement from 11:30 a.m. through 4 p.m. each day.

(c) *Regulations.* (1) According to the general regulations in § 165.23, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: March 14, 2023

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2023–05743 Filed 3–20–23; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 520, 530, 535, 540, 550, 555, and 560

[Docket No. FMC–2023–0009]

RIN 3072–AC96

Update of Existing FMC User Fees

AGENCY: Federal Maritime Commission.

ACTION: Direct final rule; request for comments.

SUMMARY: The Federal Maritime Commission (Commission) is updating its current user fees and amending the relevant regulations to reflect these updates. The direct final rule would increase some fees to reflect increases in salaries of employees assigned to certain

fee-generating services. For one service, the rule would lower fees because less-senior employees are assigned to the fee-generating activity. No substantive changes to the underlying regulations are included in this rulemaking; only changes to the user fee amounts.

DATES: The rule is effective without further action on June 5, 2023, unless significant adverse comments are filed prior to April 20, 2023. If significant adverse comments are received, the Commission will publish a timely withdrawal of the rule in the **Federal Register** no later than May 5, 2023.

ADDRESSES: You may submit comments by using the Federal eRulemaking Portal at *www.regulations.gov,* under Docket No. FMC–2023–0009, Update of Existing FMC User Fees Direct Final Rule. Please refer to the ''Public Participation'' heading under the **SUPPLEMENTARY INFORMATION** section of this notice for detailed instructions on how to submit comments, including instructions on how to request confidential treatment and additional information on the rulemaking process.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5908; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes agencies to establish charges (*i.e.,* user fees) for services and benefits that they provide to specific recipients. Under the IOAA, charges must be fair and based on the costs to the Government, the value of the service or thing to the recipient, the public policy or interest served, and other relevant facts. The IOAA also provides that regulations implementing user fees are subject to policies prescribed by the President, which are currently set forth in Office of Management and Budget (OMB) Circular A–25, *User Charges* (revised July 8, 1993).

Under OMB Circular A–25, fees must be established for Government-provided services that confer benefits on identifiable recipients over and above those benefits received by the general public. OMB Circular A–25 further provides that, generally, user fees must be sufficient to recover the full cost to the government for providing the service, resource, or good. Agencies are advised to determine or estimate costs based on the best available records in the agency and to ensure that cost computations cover the direct and indirect costs to the agency of providing the service. OMB Circular A–25 also states that agencies are permitted to set user fees below costs if conditions justify the exception.

OMB Circular A–25 also directs agencies to review biennially: (1) user charges for agency programs to assure that existing charges are adjusted to reflect unanticipated changes in costs or market values; and (2) all other agency programs to determine whether fees should be assessed. The Commission last reviewed and updated its user fees in 2020. 85 FR 72574 (Nov. 13, 2020).

II. Fee Adjustments

The Commission has reviewed its data on the time and cost involved in providing particular services to arrive at the updated direct and indirect labor costs for those services. As part of its assessment, the Commission utilized salaries of Full Time Equivalents (FTEs) assigned to fee-generating activities to identify the various direct and indirect costs associated with providing such services. Direct labor costs include clerical and professional time expended on an activity. Indirect labor costs include labor provided by bureaus and offices that provide direct support to the fee-generating offices in their efforts to provide services and include managerial and supervisory costs associated with providing a particular service. Other indirect costs include Government overhead costs, such as fringe benefits and other wage-related Government contributions contained in OMB Circular A–76, *Performance of Commercial Activities* (revised May 29, 2003) and office general and administrative expenses.[1] The sum of these indirect cost components gives an indirect cost factor that is added to the direct labor costs of an activity to arrive at the fully distributed cost. A more detailed description of the Commission's methodology has been included in the docket.

The Commission is increasing some fees to reflect increased costs relating to FTEs assigned to certain fee-generating services. For some services, an increase in processing or review time may account for all or part of the increase in the amount of the fees. For one service, the Commission is decreasing fees because less-senior employees are assigned to the fee-generating activity. No substantive changes to the underlying regulations are included in this rulemaking; only changes to the user fee amounts.

The Commission is including two supporting documents providing detailed information on the updated user fee calculations in the docket. The first document shows the direct and indirect costs for each service for which a fee is assessed based on FY 2022 cost data. The second document compares the current fee amounts established in 2020 with the updated fee amounts reflecting the current costs, showing the percentage increase or decrease and change in dollar amount.

A. Significant Change in User Fees

The Commission briefly describes below significant changes in user fees and changes that result in more than a 10 percent increase or decrease to a particular fee.

1. General Increases

For the 2020 Direct Final Rule Updating User Fees, the Commission used FY 2019 cost data, including FY 2019 salaries. Despite the fact that the 2022 update to user fees is occurring two years later, the Commission is using salary and cost data from FY 2022 to provide the most precise estimate of costs associated with user fees consistent with OMB Circular A–25. This three-year gap contributes to a significant increase in fees. Further, during this three-year period, inflation has raised salaries as well as overhead. Many of the fee increases of more than 10 percent are simply due to updating fees to reflect current costs.

2. Licensing, Registration, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries (Part 515)

When the Commission issued the last update to user fees in 2020, the rule noted that the Commission was in the process of transitioning from a paper application process to an electronic process for processing Ocean Transportation Intermediary applications. The Commission also noted that the fee for electronic applications was not modified as the system was not operational, and the costs could not be evaluated. *See* 85 FR 72574. The Commission has completed the migration to an electronic application and now updates the user fees for Part 515 through this rule to reflect the true cost to the agency of providing this service.

[1] OMB Circular A–76 lists the following indirect labor costs: Leave and holidays, retirement, worker's compensation, awards, health and life insurance, and Medicare. General and administrative costs are expressed as a percentage of basic pay. These include all salaries and overhead such as rent, utilities, supplies, and equipment allocated to Commission offices that provide direct support to fee-generating offices such as the Office of Information Technology, Office of Human Resources, Office of Budget and Finance, and the Office of Management Services.

3. Clerical Errors on Service Contracts (Part 530)

The Commission has previously provided a service to the public of correcting clerical or administrative errors with service contracts. The Commission no longer provides this service. The Commission has set the fee for this service at $0 and will address this regulation in a future rule.

III. Public Participation

How do I prepare and submit comments?

You may submit comments by using the Federal eRulemaking Portal at *www.regulations.gov,* under Docket No. FMC–2023–0009, Update of Existing FMC User Fees Direct Final Rule. Please follow the instructions provided on the Federal eRulemaking Portal to submit comments.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If you would like to request confidential treatment, pursuant to 46 CFR 502.5, you must submit the following, by email, to *secretary@fmc.gov:*

- A transmittal letter that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page and must clearly indicate any information withheld.

Will the Commission consider late comments?

The Commission will consider all comments received before the 11:59 EST on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at *www.regulations.gov,* under Docket No. FMC–2023–0009, Update of Existing FMC User Fees Direct Final Rule.

IV. Rulemaking Analyses and Notices

Administrative Procedure Act

The Commission expects the user fee updates to be noncontroversial. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), a final rule may be issued without notice and comment when the agency for good cause finds (and incorporates the finding and a brief statement of the need) that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. This rule updates the user fee amounts for various services provided by the Commission based on a review of the costs to provide these services. This rule makes no substantive changes to the Commission's regulations nor does it affect any filing or other requirement. Accordingly, the Commission has determined that providing an opportunity for comment prior to publication of this direct final rule is unnecessary under 5 U.S.C. 553(b)(B).

This rule will become effective on the date listed in the **DATES** section unless the Commission receives significant adverse comments within the specified period. The Commission recognizes that parties may have information that could impact the Commission's views and intentions with respect to the revised regulations, and the Commission intends to consider any comments filed. The Commission will withdraw the rule by the date specified in the **DATES** section if it receives significant adverse comments.

We note that the scope of the rulemaking is limited to the amounts charged for Commission services, and any substantive changes to the underlying regulations governing those services or related requirements would be outside this scope. Accordingly, comments on the underlying regulations and related requirements will not be considered adverse. Filed comments that are not adverse may be considered for modifications to the Commission's regulations at a future date. If no significant adverse comments are received, the rule will become effective without additional action by the Commission.

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. An agency is not required to publish a FRFA, however, for the following types of rules, which are excluded from the APA's notice-and-comment requirement: interpretative rules; general statements of policy; rules of agency organization, procedure, or practice; and rules for which the agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to public interest. *See* 5 U.S.C. 553(b).

As discussed above, the Commission has for good cause determined that notice and comment in this case is unnecessary. Therefore, the APA does not require publication of a notice of proposed rulemaking in this instance, and the Commission is not required to prepare a FRFA.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. This rule updates user fees for services that fall within various categorical exclusions, and no environmental assessment or environmental impact statement is required. In particular, rulemakings related to the following fall under categorical exclusions: issuance, modification, denial and revocation of ocean transportation intermediary licenses under part 515 (§ 504.4(a)(1)); certification of financial responsibility of passenger vessels under part 540 (§ 504.4(a)(2)); promulgation of procedural rules under part 502 (§ 504.4(a)(4)); receipt of service contracts (§ 504.4(a)(5)); consideration of special permission applications under part 520 (§ 504.4(a)(6)); consideration of agreements (§ 504.4(a)(9)–(13), (30)–(35)); action taken on special docket applications

under § 502.271 (§ 504.4(a)(19)); and action regarding access to public information under part 503 (§ 504.4(a)(24)).

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of a rule. 5 CFR 1320.11. This rule does not contain any collections of information as defined by 44. U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 503

Classified information, Freedom of Information, Privacy, Sunshine Act.

46 CFR Part 515

Licensing, Registration, and Surety bonds for Maritime carriers.

46 CFR Part 520

Freight, Intermodal transportation, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 530

Freight, Maritime carriers, Report and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 550

Administrative practice and procedure, Maritime carriers.

46 CFR Part 555

Administrative practice and procedure, Investigations, Maritime carriers.

46 CFR Part 560

Administrative practice and procedure, Maritime carriers.

For the reasons set forth above, the Federal Maritime Commission amends 46 CFR parts 502, 503, 515, 520, 530, 535, 540, 550, 555, and 560 as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–584; 591–596; 18 U.S.C. 207; 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C., 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106, 46105; 5 CFR part 2635.

■ 2. Amend § 502.62 by revising paragraph (a)(6) to read as follows:

§ 502.62 Private party complaints for formal adjudication.

(a) * * *

(6) *Filing fee.* The complaint must be accompanied by remittance of a $387 filing fee.

* * * * *

■ 3. Amend § 502.93 by revising paragraph (a)(3) to read as follows:

§ 502.93 Declaratory orders and fee.

(a) * * *

(3) Petitions must be accompanied by remittance of a $450 filing fee.

* * * * *

■ 4. Amend § 502.94 by revising paragraph (b) to read as follows:

§ 502.94 Petitions-general and fee.

* * * * *

(b) Petitions must be accompanied by remittance of a $450 filing fee. [Rule 94.]

■ 5. Amend § 502.271 by revising paragraph (d)(5) to read as follows:

§ 502.271 Special docket application for permission to refund or waive freight charges.

* * * * *

(d) * * *

(5) Applications must be accompanied by remittance of a $187 filing fee.

* * * * *

■ 6. Amend § 502.304 by revising the last sentence of paragraph (b) to read as follows:

§ 502.304 Procedure and filing fee.

* * * * *

(b) * * * Such claims must be accompanied by remittance of a $176 filing fee.

* * * * *

PART 503—PUBLIC INFORMATION

■ 7. The authority citation for part 503 continues to read as follows:

Authority: 5 U.S.C. 3331, 552, 552a, 552b, 553; 31 U.S.C. 9701; 46 U.S.C. 46103; E.O. 13526 of January 5, 2010, 75 FR 707, 3 CFR, 2010 Comp., p. 298, sections 5.1(a) and (b).

■ 8. Amend § 503.50 by revising paragraphs (c)(1)(i) and (ii), the first sentence of paragraph (c)(2), and paragraphs (c)(3)(ii) and (iii), (c)(4), and (d) to read as follows:

§ 503.50 Fees for services.

* * * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/administrative personnel at a rate of $41 per hour and by professional/executive personnel at a rate of $82 per hour.

(ii) Unless an exception provided in paragraph (b)(2) of this section applies, the minimum charge for record search is $41.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.33 must be assessed to recover full costs at the rate of $109 per hour. * * *

(3) * * *

(i) * * *

(ii) By Commission personnel, at the rate of ten cents per page (one side) plus $41 per hour.

(iii) Unless an exception provided in paragraph (b)(2) of this section applies, the minimum charge for copying is $8.

* * * * *

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $93 for each certification.

(d) Applications for admission to practice before the Commission for

persons not attorneys at law must be accompanied by a fee of $195 pursuant to § 502.27 of this chapter.

■ 9. Amend § 503.69 by revising paragraph (b)(2) to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $93 for each certification.

* * * * *

PART 515—LICENSING, REGISTRATION, FINANCIAL RESPONSIBILITY REQUIREMENTS AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 10. The authority citation for part 515 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. 40102, 40104, 40501–40503, 40901–40904, 41101–41109, 41301–41302, 41305–41307, 46105; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

■ 11. Amend § 515.5 by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 515.5 Forms and Fees.

* * * * *

(c) * * *

(2) * * *

(i) Application for new OTI license as required by § 515.12(a): Filing $1,304.

(ii) Application for change to OTI license or license transfer as required by § 515.20(a) and (b): Filing $943.

PART 520—CARRIER AUTOMATED TARIFFS

■ 12. The authority citation for part 520 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C., 40101–40102, 40501–40503, 40701–40706, 41101–41109, 46105.

■ 13. Amend § 520.14 by revising the last sentence of paragraph (c)(1) to read as follows:

§ 520.14 Special permission.

* * * * *

(c) * * *

(1) * * * Every such application must be submitted to the Bureau of Trade Analysis and be accompanied by a filing fee of $394.

* * * * *

PART 530—SERVICE CONTRACTS

■ 14. The authority citation for part 530 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C., 40301–40306, 40501–40503, 41307, 46105.

■ 15. Amend § 530.10 by revising paragraph (c) introductory text to read as follows:

§ 530.10 Amendment, correction, cancellation, and electronic transmission errors.

* * * * *

(c) *Corrections.* Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within one-hundred eighty (180) days of the contract's filing with the Commission, accompanied by remittance of a $0 service fee, and must include:

* * * * *

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

■ 16. The authority citation for part 535 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C., 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307, 46105.

■ 17. Amend § 535.401 by revising paragraph (g) to read as follows:

§ 535.401 General requirements.

* * * * *

(g) The filing fee is $3,980 for new agreements and $4,637 for any agreement modifications requiring Commission review and action; $1,174 for agreements processed under delegated authority (for types of agreements that can be processed under delegated authority, see § 501.27(e) of this chapter); $343 for carrier exempt agreements; and $96 for terminal exempt agreements.

* * * * *

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

■ 18. The authority citation for part 540 is revised to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; 46 U.S.C., 44101–44106, 46105.

■ 19. Amend § 540.4 by revising paragraph (e) to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

* * * * *

(e) An application for a Certificate (Performance), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of $4,936. An application for a Certificate (Performance) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of $2,400. Administrative changes, such as the renaming of a vessel will not incur any additional fees.

* * * * *

■ 20. Amend § 540.23 by revising the last two sentences of paragraph (b) to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Casualty), excluding an application for the addition or substitution of a vessel to the applicant's fleet, must be accompanied by a filing fee remittance of $2,080. An application for a Certificate (Casualty) for the addition or substitution of a vessel to the applicant's fleet must be accompanied by a filing fee remittance of $1,013.

* * * * *

PART 550—REGULATIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE OF THE UNITED STATES

■ 21. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C.; sec. 19 (a)(2), (e), (f), (g), (h), (i), (j), (k) and (l) of the Merchant Marine Act, 1920, 46 U.S.C. 42101 and 42104–42109; and sec. 10002 of the Foreign Shipping Practices Act of 1988, 46 U.S.C. 42301–42307, 46101–46108.

■ 22. Revise § 550.402 to read as follows:

§ 550.402 Filing of petitions.

All requests for relief from conditions unfavorable to shipping in the foreign trade must be by written petition. An original and fifteen copies of a petition for relief under the provisions of this part must be filed with the Secretary, Federal Maritime Commission, Washington, DC 20573. The petition must be accompanied by remittance of a $450 filing fee.

PART 555—ACTIONS TO ADDRESS ADVERSE CONDITIONS AFFECTING U.S.-FLAG CARRIERS THAT DO NOT EXIST FOR FOREIGN CARRIERS IN THE UNITED STATES

■ 23. The authority citation for part 555 continues to read as follows:

Authority: 5 U.S.C. 553; sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. 42301–42307).

■ 24. Amend § 555.4 by revising the last sentence of paragraph (a) to read as follows:

§ 555.4 Petitions.

(a) * * * The petition must be accompanied by remittance of a $450 filing fee.

* * * * *

PART 560—ACTIONS TO ADDRESS CONDITIONS UNDULY IMPAIRING ACCESS OF U.S.-FLAG VESSELS TO OCEAN TRADE BETWEEN FOREIGN PORTS

■ 25. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553; secs. 13(b)(6), 15 and 17 of the Shipping Act of 1984, 46 U.S.C., 40104, and 41108(d); sec. 10002 of the Foreign Shipping Practices Act of 1988 (46 U.S.C. 42301–42307), 46105.

■ 26. Amend § 560.3 by revising the last sentence of paragraph (a)(2) to read as follows:

§ 560.3 Petitions for relief.

(a) * * *

(2) * * * The petition must be accompanied by remittance of a $450 filing fee.

* * * * *

By the Commission.

William Cody,

Secretary.

[FR Doc. 2023–05764 Filed 3–20–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 230313–0073]

RIN 0648–BL30

List of Fisheries for 2023

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2023, as required by the Marine Mammal Protection Act (MMPA). The LOF for 2023 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: The effective date of this final rule is April 20, 2023.

ADDRESSES: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Cheryl Cross, Greater Atlantic Region, 978–281–9100; Jessica Powell, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 206–526–4740; Suzie Teerlink, Alaska Region, 907–586–7240; Elena Duke, Pacific Islands Region, 808–725–5085. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of 3 categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock, while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock. If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will be placed in Category III (unless those fisheries interact with other stock(s) for which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2: Tier 2 considers fishery-specific mortality and serious injury for a particular stock.

Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injury of marine mammals).

Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injury of marine mammals).

Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one category for one marine mammal stock and another category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,*

a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). Stocks driving a fishery's classification are denoted with a superscript ''1'' in Tables 1 and 2.

Other Criteria That May Be Considered

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995) and listed in the regulatory definition of a Category II fishery. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental mortality or serious injury is ''occasional'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes ''serious'' and ''non-serious'' documented injuries as described later in the *List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean* and *List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean* sections. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. SARs are brief reports summarizing the status of each stock of marine mammals occurring in waters under U.S. jurisdiction, including information on the identity and geographic range of the stock, population statistics related to abundance, trend, and annual productivity, notable habitat concerns, and estimates of human-caused mortality and serious injury (M/SI) by source. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs and reviewed for the 2023 LOF generally summarizes data from 2015–2019. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMPA mortality/injury reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the five-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.,* fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery), species and stocks may be retained for longer than five years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each Pacific and Alaska SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. For Atlantic fisheries, this information can be found in the LOF Fishery Fact Sheets. The SARs do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: level of observer coverage; target species; levels of fishing effort; spatial and temporal distribution of fishing effort; characteristics of fishing gear and operations; management and regulations; and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* Information on observer coverage levels in Category I, II, and III fisheries can be found in the fishery fact sheets on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *https://www.fisheries.noaa.gov/national/fisheries-observers/national-observer-program.*

How do I find out if a specific fishery is in Category I, II, or III?

The LOF includes three tables that list all U.S. commercial fisheries by Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S. authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and

the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (*e.g.,* trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 with an asterisk (*) after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for 5 years, during which time Fishery Management Plans (FMPs) can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at *https://www.fisheries.noaa.gov/permit/high-seas-fishing-permits.*

Where can I find specific information on fisheries listed on the LOF?

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: (1) when the fishery was added to the LOF; (2) the basis for the fishery's initial classification; (3) classification changes to the fishery; (4) changes to the list of species and/or stocks incidentally killed or injured in the fishery; (5) fishery gear and methods used; (6) observer coverage levels; (7) fishery management and regulation; and (8) applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* linked to the ''List of Fisheries Summary'' table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take marine mammals incidental to commercial fishing operations. The take of threatened or endangered marine mammals requires an additional authorization. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register, renew and receive my Marine Mammal Authorization Program authorization certificate?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials.

In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their state or Federal license or permit at the time of issuance or renewal. In the Southeast Region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year. In the Greater Atlantic Region, NMFS will issue vessel or gear owners an authorization certificate electronically. The certificate can be downloaded and printed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate.*

Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by the beginning of the calendar year, or with renewed fishing licenses, must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION CONTACT**). Authorization certificates may also be obtained by visiting the MMAP website *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate.*

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal license or permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries.

Individuals fishing in Category I and II fisheries for which no state or Federal license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries, fishing activity. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured,

regardless of the presence of any wound or other evidence of injury, and must be reported.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#reporting-a-death-or-injury-of-a-marine-mammal-during-commercial-fishing-operations* or by contacting the appropriate regional office (see **FOR FURTHER INFORMATION CONTACT**). Forms may be submitted via any of the following means: (1) online using the electronic form; (2) emailed as an attachment to *nmfs.mireport@noaa.gov;* (3) faxed to the NMFS Office of Protected Resources at 301–713–0376; or (4) mailed to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures are found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; thereby authorizing the exemption of vessels too small to safely accommodate an observer from this requirement. However, U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagic longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) will not be exempted from observer requirements, regardless of their size. Observer requirements are found in 50 CFR 229.7.

Am I required to comply with any marine mammal TRP regulations?

Table 4 provides a list of fisheries affected by TRPs and TRTs. TRP regulations are found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams.* It is the responsibility of fishery participants to comply with applicable take reduction regulations.

Where can I find more information about the LOF and the MMAP?

Information regarding the LOF and the MMAP, including registration procedures and forms; current and past LOFs; descriptions of each Category I and II fishery and some Category III fisheries; observer requirements; and marine mammal mortality/injury reporting forms and submittal procedures; may be obtained at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Cheryl Cross;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Long Beach Office, 501 W Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Dan Lawson;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Suzie Teerlink; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Elena Duke.

Sources of Information Reviewed for the 2023 LOF

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of mortality and serious injury of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were established by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure; uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding and entanglement data, observer program data, fishermen self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2023 was based on, among other things, stranding data; fishermen self-reports; and SARs, primarily the final 2021 SARs, which are based on data from 2015–2019. The SARs referenced in this LOF include: 2020 (86 FR 38991; July 23, 2021) and 2021 (87 FR 47385; August 3, 2022). The SARs are available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.*

Comments and Responses

NMFS received five comment letters on the proposed LOF for 2023 (87 FR 55348; September 9, 2022). Comments were received from Hawaii Longline Association (HLA), Maine Department of Marine Resources (ME DMR), Maine Lobstermen's Association (MLA), Washington Department of Fish and Wildlife (WDFW) and a member of the public. Responses to substantive comments are below. Comments on actions not related to the LOF are not included. One commenter expressed general support for the rule.

Comments on Commercial Fisheries in the Pacific Ocean

Comment 1: HLA reiterates a previous comment recommending NMFS remove the Main Hawaiian Islands (MHI) insular and Northwestern Hawaiian Islands (NWHI) stocks of false killer whales from the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery. HLA notes that (a) the False Killer Whale Take Reduction Plan (FKWTRP) closed the deep-set longline fishery for almost the entire range of the MHI insular stock, (b) since this change was made in 2013 there have been no false killer whale interactions in the fishery, and (c) there has never been a deep-set longline fishery M/SI in the very small area of the stocks' range where the fishery operates. They also state that no information has been presented to the False Killer Whale Take Reduction Team or the Pacific Scientific Review Group suggesting any false killer whale M/SI in the deep-set fishery can reliably be attributed to the MHI insular or NWHI stocks of false killer whales. HLA requests that NMFS remove the MHI insular and NWHI stocks of false killer whales from the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

Response: This comment has been addressed previously (see 84 FR 22051, May 16, 2019; 85 FR 21079, April 16, 2020; 86 FR 3028, January 14, 2021). The MHI insular stock of false killer

whales have been documented via telemetry to move far enough offshore to reach longline fishing areas (Bradford *et al.,* 2015). The MHI insular, Hawaii pelagic, and NWHI stocks have partially overlapping ranges. MHI insular false killer whales have been satellite tracked as far as 115 kilometers (km) from the MHI, while pelagic stock animals have been tracked to within 11 km of the MHI and throughout the NWHI. Thus, M/SI of false killer whales of unknown stock within the stock overlap zones must be prorated to MHI insular, pelagic, or NWHI stocks. Annual bycatch estimates are prorated using a process outlined in detail in the SARs, which account for M/SI that occur within the MHI-pelagic or NWHI-pelagic overlap zones.

For observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.,* fishery has evidence of fisheries interactions that cannot be attributed to a specific fishery, and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery), stocks may be retained on the LOF for longer than five years. For these fisheries, NMFS will review the other sources of relevant information to determine when it is appropriate to remove a species or stock from the LOF. As described in the 2019 LOF (84 FR 22051, May 16, 2019), 6 false killer whale M/SI incidental to the deep-set longline fishery were observed inside the exclusive economic zone (EEZ) around Hawaii, including three that occurred close to the outer boundary of the MHI Longline Fishing Prohibited Area, in close proximity to the outer boundary of the MHI Insular false killer whale stocks' range, which overlaps with areas that are open to deep-set longline fishing. MHI Insular false killer whales have been documented with injuries consistent with fisheries interactions that have not been attributed to a specific fishery (Baird *et al.,* 2014). Additionally, in August 2020, NMFS reopened the Southern Exclusion Zone to Hawaii deep-set longline fishing (85 FR 50959, August 19, 2020).

In addition to the SARs, NMFS also reviews other sources of new information for the LOF, including injury determination reports, bycatch estimation reports, and observer data. In some cases, more recent information may be available and used in the LOF. In January 2019, there was an observed mortality of a false killer whale incidental to the Hawaii deep-set longline fishery that occurred within the range of the NWHI stock. Therefore, NMFS retains both the MHI insular and NWHI false killer whale stocks on the list of species and/or stocks incidentally killed or injured in the Category I Hawaii deep-set longline fishery.

Comment 2: HLA reiterates a previous comment recommending NMFS remove the Central North Pacific stock of humpback whale from the list of species and/or stocks incidentally killed or injured in the Category II Hawaii shallow-set longline fishery. They state that the most recent Central North Pacific humpback whale SAR does not include any M/SI in the HI shallow-set longline fishery in the last 5 years, and the fishery has 100 percent observer coverage.

Response: This comment has been addressed previously (see 86 FR 3028, January 14, 2021). In addition to the M/SI included in the SARs, the LOF references data from injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports, and anecdotal reports. In March 2015, there was an observed humpback whale, Central North Pacific stock injury in the Category II Hawaii shallow-set longline fishery. The injury was determined to be non-serious. Due to the observed injury, the Central North Pacific stock of humpback whale is retained on the list of species and/or stocks incidentally killed or injured in the Category II Hawaii shallow-set longline fishery.

Comment 3: WDFW comments that the 2023 LOF proposed rule provides a fishery description for the Category III WA/OR sardine purse seine fishery, but the rule did not include a fishery description for the Category III WA/OR anchovy purse seine fishery. WDFW provided a description for the Category III WA/OR anchovy purse seine fishery.

Response: NMFS thanks WDFW for their review of the fishery descriptions provided in the proposed LOF for 2023 (87 FR 55348; September 9, 2022). The anchovy purse seine fishery in Washington and Oregon is currently associated with the Category III WA/OR herring, anchovy, smelt, squid purse seine or lampara fishery. The fishery description for the WA/OR herring, anchovy, smelt, squid purse seine or lampara fishery was published in the 2022 LOF (86 FR 43491; August 9, 2021). The anchovy purse seine fishery in Washington and Oregon is currently covered and sufficiently described on the LOF.

Comment 4: WDFW recommends NMFS revise the fishery description for the Category III WA/OR mainstem Columbia River eulachon gillnet fishery that was published in the proposed LOF (87 FR 55348; September 9, 2022) as follows.

Distribution: Eulachon (candlefish), which is a member of the typical smelts, are targeted in the Lower Columbia River downstream from Bonneville Dam. The fishery historically occurred throughout the winter and spring, from December 1 to March 31, to supply both the bait demand for sport sturgeon anglers and the fresh food market. In recent years, the fishery has been limited to a total of 8–15 days (primarily in February) by conservative fishery management decisions responding to declining returns and the 2010 ESA-listing.

Gear Description: The fishery is primarily conducted using 2-inch stretched bobber gill nets that are set during the turn of the tide and during the flood tide when the fish are present at intermediate depths. Most nets are suspended below the surface by dropper lines which are adjusted as needed.

Management: Oregon and Washington jointly decide management actions for Columbia River fish and fisheries in the trans-boundary mainstem reaches of the lower basin. Both states manage the fishery under the congressionally approved Columbia River Compact (Compact). The Compact States can open a commercial fishery only with the mutual consent and approbation of both states. The Compact does not restrict the right of either state to adopt regulations that are more conservative than that of the other, though such regulations can be enforced only in the adopting state's waters. Washington commercial fishers are required to have a Columbia River smelt commercial license when targeting eulachon for either human consumption or bait-fishing. Oregon does not require a separate smelt license; however, fishers do have to possess a commercial fishing license and a commercial fishing boat license. If eulachon are targeted only for bait sales, fishers may purchase a bait-fishing license only instead of a commercial fishing license and a commercial fishing boat license.

Response: NMFS thanks WDFW for the careful review of the draft fishery description for the Category III WA/OR mainstem Columbia River eulachon gillnet fishery. Based on the information provided by WDFW, we will incorporate the revised fishery description accordingly.

Comment 5: WDFW recommends NMFS revise the name of the Category III ''WA/OR Lower Columbia River (includes tributaries) gillnet'' fishery to the ''WA/OR Lower Columbia River (includes tributaries) drift net'' fishery. They also recommend revising the

fishery description published in the proposed LOF (87 FR 55348; September 9, 2022) as follows.

Distribution: The mainstem Columbia River non-treaty commercial drift net fishery historically occurred during multiple seasons (winter, spring, summer, and fall), primarily targeting Chinook (spring, summer, and fall stocks) and coho salmon from the mouth of the Columbia River upstream to Beacon Rock, Washington (approximately 140 river miles). The fishing area is divided into zones of which some, or all, may be open during a specific season. Closed areas exist at many tributary mouths. A depiction of each of the zones can be found at: *https://www.dfw.state.or.us/fish/OSCRP/CRM/docs/2013/Columbia%20River%20Commercial%20Zone%201-6%20Map.pdf.*

Due to changes in state policies, mainstem winter, spring and summer non-treaty tribal commercial fisheries have effectively not occurred since 2016. The fall fishery is comprised of both Chinook and coho-directed fisheries, with the Chinook-directed fishery currently constrained to Zones 4–5 (described above), and the coho-directed fishery occurring in Zones 1–3. Non-treaty tribal gillnet fisheries occur throughout the year in Select Area fisheries located in-off-channel areas of the Lower Columbia River. Three sites exist on the Oregon side (Youngs Bay, Tongue Point/South Channel, and Knappa/Blind Sloughs) and one in Washington (Deep River). A map of the Select Area fishing sites is available here: *https://www.dfw.state.or.us/fish/commercial/docs/Select%20Area%20Commercial%20Fishing%20Zones%20Map.pdf.*

Gear Description: The fall Zone 4–5 fishery is non-mark selective for Chinook and coho. Gear is limited to drift gillnets with a maximum length of 250 fathoms, and a maximum mesh size of 9¾ inches. Minimum mesh size varies in the fall with a 9-inch minimum mesh size commonly used in August and 8-inch commonly used in September. Recently, the fall coho-directed fishery has been under mark-selective regulations for coho utilizing live-capture techniques (small-mesh sizes, short net soak time, recovery boxes, live-capture training, etc.). Gear is limited to drift tangle nets with a maximum length of 150 fathoms, a maximum mesh size of 3¾ inches, and a maximum soak time of 30 minutes. Fishers are required to complete live-capture training before participating in this fishery. Typically, only hatchery coho and Chinook may be retained.

Management: This is a limited entry fishery, but permits are transferable if certain requirements are met. The fishery is managed by the states of Oregon and Washington within the Columbia River Compact process. Harvest limits are based on annual run sizes, ESA-take limits, hatchery escapement needs, and State policies directing sport-commercial sharing of the resource. Therefore, management occurs in coordination with the Pacific Fisheries Management Council process and take limits are set by NMFS. Chinook and coho salmon are the primary species harvested but shad and white sturgeon (when authorized) may also be harvested and sold. The harvest of steelhead, chum, and green sturgeon is prohibited.

Response: NMFS thanks WDFW for their review of the draft fishery description for the Category III WA/OR Lower Columbia River (includes tributaries) drift gillnet fishery. Based on the information provided by WDFW, NMFS revises the name of this fishery to the ''WA/OR Lower Columbia River (includes tributaries) drift net fishery'' and incorporates the revised fishery description proposed by WDFW.

Comment 6: WDFW recommends NMFS revise the name of the Category III ''WA/OR Lower Columbia River salmon seine'' fishery to the ''WA/OR Lower Columbia River emerging commercial'' fishery. They also recommend revising the fishery description published in the proposed LOF (87 FR 55348; September 9, 2022) as follows.

Distribution: Because the primary purpose of this Emerging Commercial Fishery would be to reduce the abundance of hatchery-origin fall Chinook and coho, the primary fishing area would be in commercial Zones 1–3 of the Lower Columbia River (mouth upstream to river mile 80). The season would likely occur from late-August into October, coinciding with Chinook and coho run timing.

Gear Description: Specifics pertaining to gear configuration of beach seines, purse seines, and pound nets in the Lower Columbia River Emerging Commercial Fishery is one area that requires experimentation as the fishery takes place to address issues related to bycatch, release mortality rates, and economics that complicate implementation. All three gears are legal for commercial use in Oregon and can be used in an Emerging Commercial Fishery in Washington.

Management: WDFW and Oregon Department of Fish and Wildlife are jointly managing this limited-entry fishery via the Columbia River Compact process. An Emerging Fishery license and Experimental Fishery Permit from Washington or an Experimental Gear Permit from Oregon will be needed to participate. To date, these gears have been primarily utilized in a research or limited commercial setting with an Emerging Commercial Fishery limited to 4 to 10 fishers using beach and purse seines in the fall of 2014–2016. An agency observer will be required while fishing is conducted.

Response: NMFS thanks WDFW for their review of the fishery descriptions provided as part of the proposed 2023 LOF. We note that the fishery name and description revisions proposed by WDFW include reference to pound nets, which is a gear type that has not been previously associated with any West Coast commercial fishery on the LOF. As a result, NMFS would like to collect additional information about the use of pound nets in the Lower Columbia River before revising the name and/or fishery description of salmon fisheries in the Lower Columbia River. After collecting additional information, NMFS will reconsider the comments provided by WDFW in a future proposed LOF. In the interim, NMFS notes that an eligible commercial fishery not specifically identified on the LOF, including commercial fisheries permitted by the States of Washington and/or Oregon that may include use of pound nets in the Lower Columbia River, is deemed to be a Category II fishery until the next LOF is published (50 CFR 229.2).

Comments on Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Comment 7: ME DMR and MLA reiterate previous comments that the Maine state waters trap/pot fishery should be separated out from the broader Category I Northeast/Mid-Atlantic American lobster trap/pot fishery and classified as a separate and independent Category II fishery. Both ME DMR and MLA cite the rarity of North Atlantic right whales in Maine state waters, lack of attributed right whale entanglements in the Maine lobster fishery in over 15 years, the implementation of additional risk reduction measures via the recent final rule amending the Atlantic Large Whale Take Reduction Plan (ALWTRP), and the ability to differentiate itself from other trap/pot fisheries with gear modifications and monitoring unique to the state of Maine.

ME DMR and MLA note that weak point requirements do not vary by zone in Maine state waters. In May 2022, ME state regulations began requiring that all

buoy lines in exempt waters and the sliver area (area between the exemption line and the 3-mile line) have a 1700 pounds (lb) weak insertion 50 percent of the way down the vertical line, or approved 1700 lb breaking strength line in the top 50 percent of the vertical line. They also state that the state of Massachusetts requires additional weak points in vertical lines longer than 120 feet (ft), the same weak point configuration that Maine requires is also required in Massachusetts state waters.

Both commenters also state that since September 2020, a purple state specific gear marking is required to differentiate Maine trap/pot gear from the rest of the fishery. In addition, the ALWTRP requires a Federal green mark. These Maine state marking requirements differentiated the state fishery from the rest of the Category I Northeast/Mid-Atlantic American lobster trap/pot fishery.

They state that the final rule for the 2022 LOF asserted the Maine state lobster trap/pot fishery could not be reclassified as a Category II fishery because it cannot be ruled out as the cause for recent right whale entanglements where gear had been recovered, as that recovered gear was found with red tracers indicating the gear came from the ALWTRP Northern Inshore Trap/Pot fishery that overlaps Maine, New Hampshire, and Massachusetts state waters. ME DMR and MLA note that prior to 2020 there were no gear marking requirements in the Maine exempted waters. Therefore, recent entanglements were not a result of gear set in Maine exempt waters, which is a significant portion of Maine state waters.

Lastly, ME DMR and MLA states that part of NMFS' justification for reclassifying the MA mixed species trap/pot fishery as a Category II fishery was due to the extensive North Atlantic right whale monitoring in MA. In 2020, NMFS Northeast Fisheries Science Center, deployed 8 passive acoustic recorders in Maine state waters. The commenters state that from January 2020 through June 2021 right whales were only detected on 6 days at three locations. They also note that the passive acoustic monitors will remain in their locations for at least the next three years. Maine is also undertaking additional efforts to detect right whales in Maine waters: including acoustic glider projects and broad scale aerial surveys. Therefore, the Maine state waters lobster trap/pot fishery meets the requirements for extensive monitoring and should be reclassified as a Category II fishery.

Response: This comment has been addressed previously (see 87 FR 23122; April 19, 2022). As stated in the final LOF for 2022 (87 FR 23122; April 19, 2022), the state of Massachusetts has made significant changes to their trap/pot regulations, including seasonal closures and gear modifications. These changes differentiate the Massachusetts state waters' trap/pot fishery from the Category I Northeast/Mid-Atlantic American lobster trap/pot and Category II Atlantic mixed species trap/pot fisheries.

On the 2022 LOF, NMFS classified Category II MA mixed species trap/pot fishery based on the regulatory definition (50 CFR 229.2) of a Category II fishery. The classification of the Category II Massachusetts mixed species trap/pot fishery was based on the consideration of several state regulations, which were implemented prior to the 2022 fishing season. Massachusetts implemented extensive seasonal time-area closures that spatially and temporally expanded the Massachusetts Restricted Area to significantly reduce the co-occurrence of the fishery with North Atlantic right whales. Additionally, in Massachusetts state waters, gear requirements include the following: (1) all commercial trap fishermen to fish buoy lines that break when exposed to 1,700 lbs (771 kilograms (kg)) of tension, which can be accomplished through the use of weak rope or weak insertions at 60 ft (18 meters (m)) intervals along the top 75 percent of the buoy line; (2) All commercial trap fishermen to fish buoy lines with a maximum diameter of ⅜ inch (9.5 millimeters (mm)); and (3) state-specific gear marks on all vertical lines. Marks must be red in color, at least 2 ft in length, and spaced no more than 60 ft (18 m) apart. These gear markings are distinct from those used in other states that are different colors, shorter in length, fewer in number and more widely-spaced. As noted in the 2022 LOF final rule (87 FR 23122; April 19, 2022), these combined management measures are supported by extensive monitoring of North Atlantic right whale populations through state and Federal aerial survey effort over Massachusetts' waters. This survey effort is enhanced by additional sighting and entanglement reporting that is gathered from a widespread network of visual observers. These collective measures set this fishery apart from the broader Category I Northeast/Mid-Atlantic American lobster trap/pot, and reduce its risk to North Atlantic right whales.

To separate a Category I fishery into a new fishery due to new regulatory measures, that new fishery should significantly reduce the risk of entanglement of the stock driving the Category I classification with sufficient gear marking to distinguish it from other fisheries. NMFS acknowledges that all lobster and Jonah crab trap/pot fisheries have implemented regulatory measures to reduce risk of entanglement to North Atlantic right whales under the new ALWTRP regulations finalized in 2021 (86 FR 51970; September 17, 2021).

NMFS also recognizes that the state of Maine has expanded acoustic monitoring and commenced visual surveys for marine mammals. However, cumulatively, these current efforts are not sufficient to designate the Maine state lobster fishery as a distinct fishery. Although the state of Maine has initiated monitoring efforts, data are limited in scope. Acoustic monitoring is valuable and indeed confirms that North Atlantic right whales are using Maine waters (NEFSC, 2022; PACM 2022). However, acoustic data cannot inform whale density or abundance estimates, and can only detect the presence of whales if they are vocally active while in the range of the monitoring devices (NEFSC 2022). Detection further varies by species and with physical oceanographic properties and ambient noise (Van Parijs *et al.,* 2021). Detailed information on the distribution and habitat use of North Atlantic right whales is currently lacking, particularly in coastal Maine, and these complex patterns cannot be understood from limited acoustic data and only one month of recent visual surveys. Acoustic monitoring only indicates that North Atlantic right whales are present and vocalizing during the period of surveillance and cannot quantify the abundance of North Atlantic right whales. Ongoing acoustic monitoring plus other surveillance methods, such as long-term visual surveys, will help us better understand North Atlantic right whale distribution and habitat use in Maine waters. Fiscal Year 2023 Congressional appropriations included dedicated funding for improving monitoring in the Gulf of Maine.

Increased visual survey effort can additionally contribute to the collection of entanglement information. Although entanglements are the primary cause of M/SI of large whales, including North Atlantic right whales: (1) exact entanglement locations are infrequently identified (NMFS 2021); (2) the majority of mortalities incidental to gear entanglement are undetected (Pace *et al.,* 2021); and (3) gear is rarely retrieved from an entanglement or attributed to a fishery or gear type (NMFS 2021). Confirmed large whale entanglements

have recently occurred in Maine waters, indicated by purple gear markings (4 minke and 3 humpback whales since 2020). It is not possible to determine the origin of prior North Atlantic right whale entanglement cases where no gear was collected or directly observed, or where the retrieved gear was not marked. Therefore, the lack of attributed North Atlantic right whale entanglement in particular areas does not necessarily mean entanglement did not occur there.

For the aforementioned reasons, at this time, NMFS retains the fishery as defined. As we continue to gather more data on whale occurrence and entanglements, NMFS will evaluate whether splitting out the Maine state waters trap/pot fishery from the broader Category I Northeast/Mid-Atlantic American lobster trap/pot fishery is appropriate.

Summary of Changes From the Proposed Rule

Based on public comment, NMFS renames the Category III WA/OR Lower Columbia River (includes tributaries) drift gillnet fishery to the Category III WA/OR Lower Columbia River (includes tributaries) drift net fishery.

Summary of Changes to the LOF for 2023

The following summarizes changes to the LOF for 2023, including the classification of fisheries, fisheries listed, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. NMFS reclassifies one fishery in the LOF for 2023. NMFS also makes changes to the estimated number of vessels/persons and list of species and/or stocks killed or injured in certain fisheries. The classifications and definitions of U.S. commercial fisheries for 2023 are identical to those provided in the LOF for 2022, with the changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), BBES (Barataria Bay Estuarine System), BSAI (Bering Sea, Aleutian Island), CA (California), FL (Florida), Gulf of Alaska (GOA), HI (Hawaii), OR (Oregon), and WA (Washington).

Commercial Fisheries in the Pacific Ocean

Classification of Fisheries

NMFS reclassifies the Category III Hawaii offshore pen culture fishery to Category II fishery.

Fishery Name and Organizational Changes and Clarification

NMFS renames the Category III CA set gillnet (mesh size <3.5 in) fishery to the CA herring set gillnet fishery.

NMFS renames the Category III CA pelagic longline fishery to the West Coast pelagic longline fishery.

Number of Vessels/Persons

NMFS updates the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows:

Category I

- HI deep-set longline fishery from 143 to 150 vessels/persons;

Category II

- HI shallow-set longline fishery from 11 to 14 vessels/persons;
- American Samoa longline fishery from 13 to 18 vessels/persons;
- HI shortline fishery from 5 to 11 vessels/persons;

Category III

- HI inshore gillnet fishery from 29 to 27 vessels/persons;
- HI lift net fishery from 15 to 14 vessels/persons;
- HI throw net, cast net fishery from 15 to 16 vessels/persons;
- HI seine net fishery from 17 to 16 vessels/persons;
- American Samoa tuna troll from 13 to 3 vessels/persons;
- HI troll fishery from 1,380 to 1,293 vessels/persons;
- HI rod and reel fishery from 237 to 246 vessels/persons;
- Commonwealth of the Northern Mariana Islands tuna troll fishery from 40 to 9 vessels/persons;
- Guam tuna troll fishery from 398 to 465 vessels/persons;
- HI kaka line fishery from 5 to 6 vessels/persons;
- HI vertical line fishery from none recorded to 5 vessels/persons;
- HI crab trap fishery from 4 to 3 vessels/persons;
- HI lobster trap fishery from none recorded to less than 3 vessels/persons;
- HI crab net fishery from none recorded to 3 vessels/persons;
- HI kona crab loop net fishery from 20 to 24 vessels/persons;
- American Samoa bottomfish handline fishery from 9 to 6 vessels/persons;
- Commonwealth of the Northern Mariana Islands bottomfish fishery from 11 to 12 vessels/persons;
- Guam bottomfish fishery from 67 to 84 vessels/persons;
- HI bottomfish handline fishery from 385 to 404 vessels/persons;
- HI inshore handline fishery from 206 to 192 vessels/persons;
- HI pelagic handline fishery from 300 to 311 vessels/persons;
- HI bullpen trap fishery from none recorded to less than 3 vessels/persons;
- HI black coral diving fishery from none recorded to less than 3 vessels/persons;
- HI handpick fishery from 25 to 28 vessels/persons;
- HI lobster diving fishery from 12 to 10 vessels/persons;
- HI spearfishing fishery from 82 to 79 vessels/persons;
- CA nearshore finfish trap from 93 to 42 vessels/persons; and
- HI aquarium collecting fishery from 34 to 39 vessels/persons.

List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean

NMFS corrects an administrative error and adds the HI stock of fin whale and Guadalupe fur seal to the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery.

NMFS adds the CA breeding stock of Northern elephant seal to the list of species/stocks incidentally killed or injured in the Category II CA Dungeness crab pot fishery.

NMFS adds the Western U.S. stock of Steller sea lion to the list of species/stocks incidentally killed or injured in the Category II AK Gulf of Alaska sablefish longline fishery.

NMFS adds the North Pacific stock of Pacific white-sided dolphin to the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea Aleutian Islands pollock trawl fishery.

NMFS removes the Central North Pacific stock of humpback whale from the list of species/stocks incidentally killed or injured in the Category I HI deep-set longline fishery.

NMFS removes the unknown stock of short-finned pilot whale from the list of species/stocks incidentally killed or injured in the Category II American Samoa longline fishery.

NMFS revises marine mammal stock names on the list of species/stocks incidentally killed or injured for consistency with the current stock names in the SARs as follows:

Category II AK Bristol Bay Salmon Drift Gillnet Fishery

- Spotted seal, AK to spotted seal, Bering;

Category II AK Bristol Bay Salmon Set Gillnet Fishery

- Harbor seal, Bering Sea to harbor seal, Bristol Bay; and
- Spotted seal, AK to spotted seal, Bering.

Following consultation with the U.S. Fish and Wildlife Service, NMFS also revises marine mammal stock names on the list of species/stocks incidentally killed or injured for consistency with the current stock names in the SARs as follows:

Category II CA Halibut/White Seabass and Other Species Set Gillnet (>3.5 in Mesh) Fishery

- Sea otter, CA to southern sea otter, CA; Category II AK Kodiak Salmon Set Gillnet Fishery
- Sea otter, Southwest AK to northern sea otter, Southwest AK;

Category II AK Cook Inlet Salmon Set Gillnet Fishery

- Sea otter, South central AK to northern sea otter, South Central AK;
- Category II AK Prince William Sound Salmon Drift Gillnet Fishery Sea otter, South Central AK to northern sea otter, South Central AK;

Category II CA Spiny Lobster Fishery

- Southern sea otter to southern sea otter, CA, and

Category III AK Prince William Sound Salmon Set Gillnet Fishery

- Sea otter, South central AK to northern sea otter, South Central AK.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean

NMFS adds the MS Sound, Lake Borgne, Bay Boudreau stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category II Gulf of Mexico gillnet fishery.

NMFS adds the Barataria Bay Estuarine System (BBES) stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery.

NMFS adds both the Caloosahatchee River and Waccasassa Bay, Withlacoochee Bay, Crystal Bay stocks of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category III Gulf of Mexico blue crab trap/pot fishery.

NMFS adds the Galveston Bay, East Bay, Trinity Bay stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category III U.S. Atlantic, Gulf of Mexico trotline fishery.

NMFS corrects an administrative error and removes the Northern Gulf of Mexico coastal stock of bottlenose dolphin from the list of species/stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico stone crab fishery.

NMFS corrects an administrative error and removes the Eastern Gulf of Mexico coastal stock of bottlenose dolphin from the list of species/stocks incidentally killed or injured in the Category III FL West Coast sardine purse seine fishery.

Commercial Fisheries on the High Seas

Number of Vessels/Persons

NMFS updates the estimated number of HSFCA permits for high seas fisheries (Table 3) as follows:

Category I

- Atlantic highly migratory species longline fishery from 39 to 30 HSFCA permits;
- Western Pacific pelagic (HI deep-set component) longline fishery from 143 to 150 HSFCA permits;

Category II

- Pacific highly migratory species drift gillnet fishery from 5 to 3 HSFCA permits;
- Atlantic highly migratory species trawl fishery from 1 to 0 HSFCA permits;
- Western and Central Pacific Ocean tuna purse seine fishery from 20 to 34 HSFCA permits;
- Western Pacific pelagic purse seine fishery from 1 to 0 HSFCA permits;
- South Pacific albacore troll longline fishery from 6 to 8 HSFCA permits;
- Western Pacific pelagic (HI shallow-set component) longline fishery from 11 to 14 HSFCA permits;
- Atlantic highly migratory species handline/pole and line fishery from 1 to 0 HSFCA permits;
- Pacific highly migratory species handline/pole and line fishery from 44 to 45 HSFCA permits;
- South Pacific albacore troll handline/pole and line fishery from 9 to 7 HSFCA permits;
- Western Pacific pelagic handline/pole and line fishery from 5 to 1 HSFCA permits;
- South Pacific albacore troll fishery from 20 to 24 HSFCA permits;
- Western Pacific pelagic troll fishery from 6 to 7 HSFCA permits;

Category III

- Pacific highly migratory species longline fishery from 111 to 127 HSFCA permits;
- Pacific highly migratory species purse seine fishery from 5 to 2 HSFCA permits;
- Northwest Atlantic trawl fishery from 4 to 3 HSFCA permits; and
- Pacific highly migratory species troll fishery from 107 to 93 HSFCA permits.

List of Species and/or Stocks Incidentally Killed or Injured on the High Seas

NMFS corrects an administrative error and adds the HI stock of rough-toothed dolphin to the list of species/stocks incidentally killed or injured in the Category I Western Pacific Pelagic longline fishery (HI deep-set component).

NMFS removes the Central North Pacific stock of humpback whale from the list of species/stocks incidentally killed or injured in the Category I Western Pacific Pelagic longline fishery (HI deep-set component).

NMFS removes three stocks from the list of species/stocks incidentally killed or injured in the Category II Western Pacific Pelagic longline fishery (HI shallow-set component). The three stocks are: (1) Ginkgo-toothed beaked whale, (2) CA breeding stock of Northern elephant seal and (3) CA/OR/WA stock of short-beaked common dolphin.

NMFS removes the unknown stock of humpback whale from the list of species/stocks incidentally killed or injured in the Category II Western and Central Pacific Ocean tuna purse seine fishery.

NMFS revises the following marine mammal stock names to ''unknown'' stock on the list of species/stocks incidentally killed or injured in the Category II Western and Central Pacific Ocean tuna purse seine fishery based on more recent observer data:

- Bottlenose dolphin, HI pelagic
- Bryde's whale, HI
- False killer whale, HI pelagic
- Fin whale, HI
- Long-beaked common dolphin, CA
- Minke whale, HI
- Pygmy killer whale, HI
- Sei whale, HI, and
- Sperm whale, HI

List of Fisheries

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska), Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean, Table 3 lists commercial fisheries on the high seas, and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms

of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year, without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisherman used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to gather more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact information included above in the section: Where can I find more information about the LOF and the MMAP?).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMAP reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2019. This list includes all species and/or stocks known to be killed or injured in a given fishery, but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMAP reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery's classification (*i.e.,* the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent (Category I), or greater than 1 percent and less than 50 percent (Category II), of a stock's PBR) by a ''1'' after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2 (*i.e.,* fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by adding a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately on Table 1 or 2 and Table 3, are considered the same fisheries on either side of the EEZ boundary. NMFS has designated those fisheries in each table with an asterisk (*) after the fishery's name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
Longline/Set Line Fisheries:		
HI deep-set longline * ^	150	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic.[1] False killer whale, MHI Insular. False killer whale, NWHI. Kogia *spp.* (Pygmy or dwarf sperm whale), HI. Risso's dolphin, HI. Rough-toothed dolphin, HI. Short-finned pilot whale, HI. Striped dolphin, HI.
Category II		
Gillnet Fisheries:		
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	21	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Dall's porpoise, CA/OR/WA. Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
		Long-beaked common dolphin, CA. Minke whale, CA/OR/WA.[1] Northern elephant seal, CA breeding. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA. Short-finned pilot whale, CA/OR/WA.[1] Sperm Whale, CA/OR/WA.[1]
CA halibut/white seabass and other species set gillnet (>3.5 in mesh).	39	California sea lion, U.S. Gray whale, Eastern North Pacific. Harbor seal, CA. Humpback whale, CA/OR/WA.[1] Long-beaked common dolphin, CA. Northern elephant seal, CA breeding. Southern sea otter, CA. Short-beaked common dolphin, CA/OR/WA.
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in)[2].	20	California sea lion, U.S. Long-beaked common dolphin, CA. Short-beaked common dolphin, CA/OR/WA.
AK Bristol Bay salmon drift gillnet[2]	1,862	Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Harbor seal, Bering Sea. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Spotted seal, Bering. Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet[2]	979	Beluga whale, Bristol Bay. Gray whale, Eastern North Pacific. Harbor seal, Bristol Bay. Northern fur seal, Eastern Pacific. Spotted seal, Bering.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA.[1] Harbor seal, GOA. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Northern sea otter, Southwest AK. Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet	736	Beluga whale, Cook Inlet. Dall's porpoise, AK. Harbor porpoise, GOA. Harbor seal, Cook Inlet/Shelikof Strait. Humpback whale, Central North Pacific.[1] Northern sea otter, South central AK. Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	569	Beluga whale, Cook Inlet. Dall's porpoise, AK. Harbor porpoise, GOA.[1] Harbor seal, GOA. Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet[2]	162	Dall's porpoise, AK. Harbor porpoise, GOA. Harbor seal, GOA. Northern fur seal, Eastern Pacific.
AK Peninsula/Aleutian Islands salmon set gillnet[2]	113	Harbor porpoise, Bering Sea. Northern sea otter, Southwest AK. Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK. Gray whale, Eastern North Pacific. Harbor porpoise, GOA.[1] Harbor seal, Prince William Sound. Humpback whale, Central North Pacific. Northern fur seal, Eastern Pacific. Pacific white-sided dolphin, North Pacific. Northern sea otter, South central AK. Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	474	Dall's porpoise, AK. Harbor porpoise, Southeast AK. Harbor seal, Southeast AK. Humpback whale, Central North Pacific.[1] Pacific white-sided dolphin, North Pacific. Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet[2]	168	Gray whale, Eastern North Pacific. Harbor Porpoise, Southeastern AK. Harbor seal, Southeast AK. Humpback whale, Central North Pacific (Southeast AK).
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded).	136	Dall's porpoise, CA/OR/WA. Harbor porpoise, inland WA.[1] Harbor seal, WA inland.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Trawl Fisheries:		
AK Bering Sea, Aleutian Islands flatfish trawl	32	Bearded seal, Beringia. Gray whale, Eastern North Pacific. Harbor porpoise, Bering Sea. Harbor seal, Bristol Bay. Humpback whale, Western North Pacific.[1] Killer whale, Eastern North Pacific Alaska resident.[1] Killer whale, Eastern North Pacific GOA, AI, BS transient.[1] Northern fur seal, Eastern Pacific. Ringed seal, Arctic. Ribbon seal. Spotted seal, Bering. Steller sea lion, Western U.S.[1] Walrus, AK.
AK Bering Sea, Aleutian Islands pollock trawl	102	Harbor seal, Bristol Bay. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Pacific white-sided dolphin, North Pacific. Ribbon seal. Ringed seal, Arctic. Steller sea lion, Western U.S.[1]
Pot, Ring Net, and Trap Fisheries:		
AK Bering Sea, Aleutian Islands Pacific cod pot	59	Harbor seal, Bristol Bay. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific.
CA coonstripe shrimp pot	9	Gray whale, Eastern North Pacific. Harbor seal, CA. Humpback whale, CA/OR/WA.[1]
CA spiny lobster	189	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Humpback whale, CA/OR/WA.[1] Gray whale, Eastern North Pacific. Southern sea otter, CA.
CA spot prawn pot	22	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1] Long-beaked common dolphin, CA.
CA Dungeness crab pot	471	Blue whale, Eastern North Pacific.[1] Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1] Killer whale, Eastern North Pacific GOA, BSAI transient. Killer whale, West Coast transient. Northern elephant seal, CA breeding.
OR Dungeness crab pot	323	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
WA/OR/CA sablefish pot	144	Humpback whale, CA/OR/WA.[1]
WA coastal Dungeness crab pot	204	Gray whale, Eastern North Pacific. Humpback whale, CA/OR/WA.[1]
Longline/Set Line Fisheries:		
AK Gulf of Alaska sablefish longline	295	Northern elephant seal, California. Sperm whale, North Pacific. Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI shallow-set longline * ^	14	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic.[1] Fin whale, HI. Guadalupe fur seal. Humpback whale, Central North Pacific. Risso's dolphin, HI. Striped dolphin, HI.
American Samoa longline [2]	18	False killer whale, American Samoa. Rough-toothed dolphin, American Samoa. Striped dolphin, unknown.
HI shortline [2]	11	None documented.
Marine Aquaculture Fisheries:		
HI offshore pen culture	1	Hawaiian monk seal.
Category III		
Gillnet Fisheries:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,778	Harbor porpoise, Bering Sea.
AK Prince William Sound salmon set gillnet	29	Harbor seal, GOA. Northern sea otter, South central AK. Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	920	None documented.
CA herring set gillnet	11	None documented.
HI inshore gillnet	27	Bottlenose dolphin, HI. Spinner dolphin, HI.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	19	Harbor seal, OR/WA coast.
WA/OR Mainstem Columbia River eulachon gillnet	10	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
WA/OR lower Columbia River (includes tributaries) drift net	244	California sea lion, U.S. Harbor seal, OR/WA coast.
WA Willapa Bay drift gillnet	57	Harbor seal, OR/WA coast. Northern elephant seal, CA breeding.
Miscellaneous Net Fisheries:		
AK Cook Inlet salmon purse seine	83	Humpback whale, Central North Pacific.
AK Kodiak salmon purse seine	376	Dall's porpoise, AK. Harbor seal, North Kodiak. Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Steller sea lion, Western U.S.
AK Southeast salmon purse seine	315	Humpback whale, Central North Pacific.
AK roe herring and food/bait herring beach seine	10	None documented.
AK roe herring and food/bait herring purse seine	356	None documented.
AK salmon beach seine	31	None documented.
AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula).	936	Harbor seal, GOA. Harbor seal, Prince William Sound.
WA/OR sardine purse seine	6	None documented.
CA anchovy, mackerel, sardine purse seine	53	California sea lion, U.S. Harbor seal, CA.
CA squid purse seine	68	California sea lion, U.S. Long-beaked common dolphin, CA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA.
CA tuna purse seine *	14	None documented.
WA/OR Lower Columbia River salmon seine	1	None documented.
WA/OR herring, anchovy, smelt, squid purse seine or lampara	41	None documented.
WA salmon seine	81	None documented.
WA salmon reef net	11	None documented.
HI lift net	14	None documented.
HI inshore purse seine	None recorded	None documented.
HI throw net, cast net	16	None documented.
HI seine net	16	None documented.
Dip Net Fisheries:		
CA squid dip net	19	None documented.
Marine Aquaculture Fisheries:		
CA marine shellfish aquaculture	unknown	None documented.
CA salmon enhancement rearing pen	>1	None documented.
CA white seabass enhancement net pens	13	California sea lion, U.S.
WA salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters.
WA/OR shellfish aquaculture	23	None documented.
Troll Fisheries:		
WA/OR/CA albacore surface hook and line/troll	556	None documented.
CA halibut, white seabass, and yellowtail hook and line/handline	388	None documented.
CA/OR/WA non-albacore HMS hook and line	124	None documented.
AK Bering Sea, Aleutian Islands groundfish hand troll and dinglebar troll.	unknown	None documented.
AK Gulf of Alaska groundfish hand troll and dinglebar troll	unknown	None documented.
AK salmon troll	1,908	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	3	None documented.
CA/OR/WA salmon troll	1,030	None documented.
HI troll	1,293	Pantropical spotted dolphin, HI.
HI rod and reel	246	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	9	None documented.
Guam tuna troll	465	None documented.
Longline/Set Line Fisheries:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	4	Killer whale, GOA, AI, BS transient.
AK Bering Sea, Aleutian Islands Pacific cod longline	45	Northern fur seal, Eastern Pacific. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands sablefish longline	22	None documented.
AK Bering Sea, Aleutian Islands halibut longline	127	Northern fur seal, Eastern Pacific. Sperm whale, North Pacific.
AK Gulf of Alaska halibut longline	855	Harbor seal, Clarence Strait. Harbor seal, Cook Inlet. Steller sea lion, Eastern U.S.
AK Gulf of Alaska Pacific cod longline	92	Harbor seal, Cook Inlet/Shelikof Strait. Steller sea lion, Western U.S.
AK octopus/squid longline	3	None documented.
AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish).	464	None documented.
WA/OR/CA groundfish, bottomfish longline/set line	314	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Northern elephant seal, California breeding. Sperm whale, CA/OR/WA. Steller sea lion, Eastern U.S.
WA/OR/CA Pacific halibut longline	130	None documented.
West Coast pelagic longline	4	None documented in the most recent 5 years of data.
HI kaka line	6	None documented.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
HI vertical line	5	None documented.
Trawl Fisheries:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	13	Harbor seal, Aleutian Islands. Northern elephant seal, California. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	72	Bearded seal, AK. Ribbon seal. Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	17	Harbor seal, Aleutian Islands. Ribbon seal.
AK Gulf of Alaska flatfish trawl	36	Harbor seal, Cook Inlet/Shelikof Strait. Harbor seal, North Kodiak. Harbor seal, South Kodiak. Steller sea lion, Western U.S.
AK Gulf of Alaska Pacific cod trawl	55	Steller sea lion, Western U.S.
Alaska pollock trawl	67	Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	43	Steller sea lion, Western U.S.
AK Kodiak food/bait herring otter trawl	4	None documented.
AK shrimp otter trawl and beam trawl	38	None documented.
AK state-managed waters of Prince William Sound groundfish trawl.	2	None documented.
CA halibut bottom trawl	23	California sea lion, U.S. Harbor porpoise, unknown. Harbor seal, unknown. Northern elephant seal, CA breeding. Steller sea lion, unknown.
CA sea cucumber trawl	11	None documented.
WA/OR/CA shrimp trawl	130	California sea lion, U.S.
WA/OR/CA groundfish trawl	118	California sea lion, U.S. Dall's porpoise, CA/OR/WA. Harbor seal, OR/WA coast. Northern elephant seal, CA breeding. Northern fur seal, Eastern Pacific. Northern right whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Steller sea lion, Eastern U.S.
Pot, Ring Net, and Trap Fisheries:		
AK Bering Sea, Aleutian Islands sablefish pot	6	Sperm whale, North Pacific.
AK Bering Sea, Aleutian Islands crab pot	540	Bowhead whale, Western Arctic. Gray whale, Eastern North Pacific.
AK Gulf of Alaska crab pot	271	None documented.
AK Gulf of Alaska Pacific cod pot	116	None documented in most recent 5 years of data.
AK Gulf of Alaska sablefish pot	248	None documented.
AK Southeast Alaska crab pot	375	Humpback whale, Central North Pacific (Southeast AK).
AK Southeast Alaska shrimp pot	99	Humpback whale, Central North Pacific (Southeast AK).
AK shrimp pot, except Southeast	141	None documented.
AK octopus/squid pot	15	None documented.
CA rock crab pot	113	Gray whale, Eastern North Pacific. Harbor seal, CA.
CA Tanner crab pot fishery	1	None documented.
WA/OR/CA hagfish pot	63	None documented.
WA/OR shrimp pot/trap	28	None documented.
WA Puget Sound Dungeness crab pot/trap	145	None documented.
HI crab trap	3	Humpback whale, Central North Pacific.
HI fish trap	4	None documented.
HI lobster trap	Less than 3	None documented in recent years.
HI shrimp trap	3	None documented.
HI crab net	3	None documented.
HI Kona crab loop net	24	None documented.
Hook and Line, Handline, and Jig Fisheries:		
AK Bering Sea, Aleutian Islands groundfish jig	2	None documented.
AK Gulf of Alaska groundfish jig	214	None documented in most recent 5 years of data.
AK halibut jig	71	None documented.
American Samoa bottomfish	6	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	12	None documented.
Guam bottomfish	84	None documented.
HI aku boat, pole, and line	None recorded	None documented.
HI bottomfish handline	404	None documented in recent years.
HI inshore handline	192	None documented.
HI pelagic handline	311	None documented.
WA/OR/CA groundfish/finfish hook and line	689	California sea lion, U.S.
Western Pacific squid jig	0	None documented.
Harpoon Fisheries:		
CA swordfish harpoon	21	None documented.
Pound Net/Weir Fisheries:		
AK herring spawn on kelp pound net	291	None documented.
AK Southeast herring roe/food/bait pound net	2	None documented.
HI bullpen trap	Less than 3	None documented.
Bait Pens:		
WA/OR/CA bait pens	13	California sea lion, U.S.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Dredge Fisheries:		
AK scallop dredge	108 (5 AK)	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
AK clam	130	None documented.
AK Dungeness crab	2	None documented.
AK herring spawn on kelp	266	None documented.
AK miscellaneous invertebrates handpick	214	None documented.
CA/OR/WA dive collection	186	None documented.
CA/WA kelp, seaweed and algae	4	None documented.
HI black coral diving	Less than 3	None documented.
HI fish pond	None recorded	None documented.
HI handpick	28	None documented.
HI lobster diving	10	None documented.
HI spearfishing	79	None documented.
WA/OR/CA hand/mechanical collection	320	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (1,006 AK)	Humpback whale, Central North Pacific. Humpback whale, Western North Pacific. Killer whale, unknown. Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
Live Finfish/Shellfish Fisheries:		
CA nearshore finfish trap	42	None documented.
HI aquarium collecting	39	None documented.

List of Abbreviations and Symbols Used in Table 1:
AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington;
[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR;
[2] Fishery classified by analogy;
* Fishery has an associated high seas component listed in Table 3; and
^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Category I		
Gillnet Fisheries:		
Mid-Atlantic gillnet	4,020	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Southern Migratory coastal.[1] Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.[1] Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Gray seal, WNA. Harbor porpoise, GME/BF. Harbor seal, WNA. Hooded seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast.
Northeast sink gillnet	4,072	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Fin whale, WNA. Gray seal, WNA.[1] Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA. Risso's dolphin, WNA. White-sided dolphin, WNA.
Trap/Pot Fisheries:		
Northeast/Mid-Atlantic American lobster trap/pot	8,485	Humpback whale, Gulf of Maine. Minke whale, Canadian east coast. North Atlantic right whale, WNA.[1]
Longline Fisheries:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline*.	201	Atlantic spotted dolphin, Northern GMX. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
		False killer whale, WNA. Harbor porpoise, GME, BF. Kogia *spp.* (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA. Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast. Pantropical spotted dolphin, Northern GMX. Pygmy sperm whale, GMX. Risso's dolphin, Northern GMX. Risso's dolphin, WNA. Rough-toothed dolphin, Northern GMX. Short-finned pilot whale, Northern GMX. Short-finned pilot whale, WNA.[1] Sperm whale, Northern GMX.
Category II		
Gillnet Fisheries:		
Chesapeake Bay inshore gillnet[2]	265	Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal).
Gulf of Mexico gillnet[2]	248	Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX bay, sound, and estuarine. Bottlenose dolphin, Mobile Bay, Bonsecour Bay. Bottlenose dolphin, MS Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Western GMX coastal.
NC inshore gillnet	2,676	Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.[1]
Northeast anchored float gillnet[2]	852	Harbor seal, WNA. Humpback whale, Gulf of Maine. White-sided dolphin, WNA.
Northeast drift gillnet[2]	1,036	None documented.
Southeast Atlantic gillnet[2]	273	Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Northern FL coastal. Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Southern migratory coastal.
Southeastern U.S. Atlantic shark gillnet	21	Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal). North Atlantic right whale, WNA.
Trawl Fisheries:		
Mid-Atlantic mid-water trawl (including pair trawl)	320	Bottlenose dolphin, WNA offshore. Harbor seal, WNA.
Mid-Atlantic bottom trawl	633	Bottlenose dolphin, WNA offshore.[1] Common dolphin, WNA.[1] Gray seal, WNA.[1] Harbor seal, WNA. Risso's dolphin, WNA.[1] White-sided dolphin, WNA.
Northeast mid-water trawl (including pair trawl)	542	Common dolphin, WNA. Gray seal, WNA. Harbor seal, WNA. Long-finned pilot whale, WNA.[1]
Northeast bottom trawl	968	Bottlenose dolphin, WNA offshore.[1] Common dolphin, WNA. Gray seal, WNA.[1] Harbor porpoise, GME/BF. Harbor seal, WNA. Harp seal, WNA. Long-finned pilot whale, WNA.[1] Risso's dolphin, WNA.[1] White-sided dolphin, WNA.[1]
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	10,824	Atlantic spotted dolphin, Northern Gulf of Mexico. Bottlenose dolphin, Barataria Bay Estuarine System. Bottlenose dolphin, Charleston estuarine system. Bottlenose dolphin, Eastern GMX coastal.[1] Bottlenose dolphin, GMX bay, sound, estuarine.[1] Bottlenose dolphin, GMX continental shelf. Bottlenose dolphin, Mississippi River Delta. Bottlenose dolphin, Mobile Bay, Bonsecour Bay. Bottlenose dolphin, Northern GMX coastal.[1] Bottlenose dolphin, Pensacola Bay, East Bay. Bottlenose dolphin, Perdido Bay. Bottlenose dolphin, SC/GA coastal.[1] Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Western GMX coastal.[1]
Trap/Pot Fisheries:		
MA mixed species trap/pot	1,240	None documented.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot [2]	1,101	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion). Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Sarasota Bay, Little Sarasota Bay.
Atlantic mixed species trap/pot [2]	3,493	Fin whale, WNA. Humpback whale, Gulf of Maine.
Atlantic blue crab trap/pot	6,679	Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Central GA estuarine system.[1] Bottlenose dolphin, Charleston estuarine system.[1] Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Northern FL coastal.[1] Bottlenose dolphin, Northern GA/Southern SC estuarine system. Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Northern SC estuarine system. Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Southern GA estuarine system. Bottlenose dolphin, Southern Migratory coastal.[1] Bottlenose dolphin, Southern NC estuarine system. West Indian manatee, FL.
Purse Seine Fisheries:		
Gulf of Mexico menhaden purse seine	40–42	Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Mississippi River Delta. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern GMX coastal.[1] Bottlenose dolphin, Western GMX coastal.[1]
Mid-Atlantic menhaden purse seine [2]	17	Bottlenose dolphin, Northern Migratory coastal. Bottlenose dolphin, Southern Migratory coastal.
Haul/Beach Seine Fisheries:		
Mid-Atlantic haul/beach seine	359	Bottlenose dolphin, Northern Migratory coastal.[1] Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern Migratory coastal.[1]
NC long haul seine	22	Bottlenose dolphin, Northern NC estuarine system.[1] Bottlenose dolphin, Southern NC estuarine system.
Stop Net Fisheries:		
NC roe mullet stop net	1	Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system).
Pound Net Fisheries:		
VA pound net	20	Bottlenose dolphin, Northern migratory coastal. Bottlenose dolphin, Northern NC estuarine system. Bottlenose dolphin, Southern Migratory coastal.[1]
Category III		
Gillnet Fisheries:		
Caribbean gillnet	127	None documented in the most recent 5 years of data.
DE River inshore gillnet	unknown	None documented in the most recent 5 years of data.
Long Island Sound inshore gillnet	unknown	None documented in the most recent 5 years of data.
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet.	unknown	None documented in the most recent 5 years of data.
Southeast Atlantic inshore gillnet	unknown	Bottlenose dolphin, Northern SC estuarine system.
Trawl Fisheries:		
Atlantic shellfish bottom trawl	>58	None documented.
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, Northern GMX continental shelf.
Gulf of Mexico mixed species trawl	20	None documented.
GA cannonball jellyfish trawl	1	Bottlenose dolphin, SC/GA coastal.
Marine Aquaculture Fisheries:		
Finfish aquaculture	48	Harbor seal, WNA.
Shellfish aquaculture	unknown	None documented.
Purse Seine Fisheries:		
Gulf of Maine Atlantic herring purse seine	>7	Harbor seal, WNA.
Gulf of Maine menhaden purse seine	>2	None documented.
FL West Coast sardine purse seine	10	None documented.
U.S. Atlantic tuna purse seine*	5	None documented in most recent 5 years of data.
Longline/Hook and Line Fisheries:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,207	None documented.
Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon.	2,846	Humpback whale, Gulf of Maine.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	Bottlenose dolphin, GMX continental shelf.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species and/or stocks incidentally killed or injured
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	39	Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, Northern GMX continental shelf.
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon.	680	None documented.
U.S. Atlantic, Gulf of Mexico trotline	unknown	Bottlenose dolphin, Galveston Bay, East Bay, Trinity Bay.
Trap/Pot Fisheries:		
Caribbean mixed species trap/pot	154	Bottlenose dolphin, Puerto Rico and United States Virgin Islands.
Caribbean spiny lobster trap/pot	40	None documented.
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay estuarine. Bottlenose dolphin, FL Keys.
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Barataria Bay. Bottlenose dolphin, Caloosahatchee River. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Mobile Bay, Bonsecour Bay. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Waccasassa Bay, Withlacoochee Bay, Crystal Bay. Bottlenose dolphin, Western GMX coastal. West Indian manatee, FL.
Gulf of Mexico mixed species trap/pot	unknown	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented.
U.S. Mid-Atlantic eel trap/pot	unknown	None documented.
Stop Seine/Weir/Pound Net/Floating Trap/Fyke Net Fisheries:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	>1	Harbor porpoise, GME/BF. Harbor seal, WNA. Minke whale, Canadian east coast. Atlantic white-sided dolphin, WNA.
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented.
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net).	unknown	Bottlenose dolphin, Northern NC estuarine system.
RI floating trap	9	None documented.
Northeast and Mid-Atlantic fyke net	unknown	None documented.
Dredge Fisheries:		
Gulf of Maine sea urchin dredge	unknown	None documented.
Gulf of Maine mussel dredge	unknown	None documented.
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>403	None documented.
Mid-Atlantic blue crab dredge	unknown	None documented.
Mid-Atlantic soft-shell clam dredge	unknown	None documented.
Mid-Atlantic whelk dredge	unknown	None documented.
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented.
New England and Mid-Atlantic offshore surf clam/quahog dredge	unknown	None documented.
Haul/Beach Seine Fisheries:		
Caribbean haul/beach seine	38	West Indian manatee, Puerto Rico.
Gulf of Mexico haul/beach seine	unknown	None documented.
Southeastern U.S. Atlantic haul/beach seine	25	None documented.
Dive, Hand/Mechanical Collection Fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented.
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented.
Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	Bottlenose dolphin, Barataria Bay estuarine system. Bottlenose dolphin, Biscayne Bay estuarine. Bottlenose dolphin, Central FL coastal. Bottlenose dolphin, Choctawhatchee Bay. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, FL Bay. Bottlenose dolphin, GMX bay, sound, estuarine. Bottlenose dolphin, Indian River Lagoon estuarine system. Bottlenose dolphin, Jacksonville estuarine system. Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. Bottlenose dolphin, Northern FL coastal. Bottlenose dolphin, Northern GA/Southern SC estuarine. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Northern migratory coastal. Bottlenose dolphin, Northern NC estuarine. Bottlenose dolphin, Southern migratory coastal. Bottlenose dolphin, Southern NC estuarine system. Bottlenose dolphin, SC/GA coastal. Bottlenose dolphin, Western GMX coastal. Short-finned pilot whale, WNA.

List of Abbreviations and Symbols Used in Table 2:

DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC- South Carolina; VA—Virginia; WNA—Western North Atlantic;

[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR;

[2] Fishery classified by analogy; and

* Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Category I		
Longline Fisheries:		
Atlantic Highly Migratory Species *	30	Atlantic spotted dolphin, WNA. Bottlenose dolphin, Northern GMX oceanic. Bottlenose dolphin, WNA offshore. Common dolphin, WNA. Cuvier's beaked whale, WNA. False killer whale, WNA. Killer whale, GMX oceanic. Kogia *spp.* whale (Pygmy or dwarf sperm whale), WNA. Long-finned pilot whale, WNA. Mesoplodon beaked whale, WNA. Minke whale, Canadian East coast. Pantropical spotted dolphin, WNA. Risso's dolphin, GMX. Risso's dolphin, WNA. Short-finned pilot whale, WNA.
Western Pacific Pelagic (HI Deep-set component) *^	150	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Kogia *spp.* (Pygmy or dwarf sperm whale), HI. Risso's dolphin, HI. Rough-toothed dolphin, HI. Short-finned pilot whale, HI. Striped dolphin, HI.
Category II		
Drift Gillnet Fisheries:		
Pacific Highly Migratory Species *^	3	Long-beaked common dolphin, CA. Humpback whale, CA/OR/WA. Northern right-whale dolphin, CA/OR/WA. Pacific white-sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Short-beaked common dolphin, CA/OR/WA.
Trawl Fisheries:		
Atlantic Highly Migratory Species **	0	No information.
CCAMLR	0	Antarctic fur seal.
Purse Seine Fisheries:		
Western and Central Pacific Ocean Tuna Purse Seine	34	Bottlenose dolphin, unknown. Blue whale, unknown. Bryde's whale, unknown. False killer whale, unknown. Fin whale, unknown. Indo-Pacific dolphin. Long-beaked common dolphin, unknown. Melon-headed whale, unknown. Minke whale, unknown. Pantropical spotted dolphin, unknown. Pygmy killer whale, unknown. Risso's dolphin, unknown. Rough-toothed dolphin, unknown. Sei whale, unknown. Short-finned pilot whale, unknown. Sperm whale, unknown. Spinner dolphin, unknown.
Western Pacific Pelagic	0	No information.
Longline Fisheries:		
CCAMLR	0	None documented.
South Pacific Albacore Troll	8	No information.
Western Pacific Pelagic (HI Shallow-set component) *^	14	Bottlenose dolphin, HI Pelagic. False killer whale, HI Pelagic. Fin whale, HI. Guadalupe fur seal. Humpback whale, Central North Pacific. Risso's dolphin, HI. Striped dolphin, HI.
Handline/Pole and Line Fisheries:		
Atlantic Highly Migratory Species	0	No information.
Pacific Highly Migratory Species	45	No information.
South Pacific Albacore Troll	7	No information.
Western Pacific Pelagic	1	No information.
Troll Fisheries:		

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

Fishery description	Number of HSFCA permits	Marine mammal species and/or stocks incidentally killed or injured
Atlantic Highly Migratory Species	0	No information.
South Pacific Albacore Troll	24	No information.
South Pacific Tuna Fisheries**	0	No information.
Western Pacific Pelagic	7	No information.
Category III		
Longline Fisheries:		
Northwest Atlantic Bottom Longline	2	None documented.
Pacific Highly Migratory Species	127	None documented in the most recent 5 years of data.
Purse Seine Fisheries:		
Pacific Highly Migratory Species*^	2	None documented.
Trawl Fisheries:		
Northwest Atlantic	3	None documented.
Troll Fisheries:		
Pacific Highly Migratory Species*	93	None documented.

List of Terms, Abbreviations, and Symbols Used in Table 3:
CA—California; GMX—Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic;
*Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery;
**These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for 5 years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type; and
^The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

Take reduction plans	Affected fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32	*Category I:* Mid-Atlantic gillnet. Northeast/Mid-Atlantic American lobster trap/pot. Northeast sink gillnet. *Category II:* Atlantic blue crab trap/pot. Atlantic mixed species trap/pot. MA mixed species trap/pot. Northeast anchored float gillnet. Northeast drift gillnet. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet.* Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^
Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35	*Category I:* Mid-Atlantic gillnet. *Category II:* Atlantic blue crab trap/pot. Chesapeake Bay inshore gillnet fishery. Mid-Atlantic haul/beach seine. Mid-Atlantic menhaden purse seine. NC inshore gillnet. NC long haul seine. NC roe mullet stop net. Southeast Atlantic gillnet. Southeastern U.S. Atlantic shark gillnet. Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.^ Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^ VA pound net.
False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37 ..	*Category I:* HI deep-set longline. *Category II:* HI shallow-set longline.
Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic).	*Category I:* Mid-Atlantic gillnet. Northeast sink gillnet.
Pelagic Longline Take Reduction Plan(PLTRP)—50 CFR 229.36	*Category I:* Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.
Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31.	*Category II:* CA thresher shark/swordfish drift gillnet (≥14 in mesh).

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS—Continued

Take reduction plans	Affected fisheries
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	*Category II:* Mid-Atlantic bottom trawl. Mid-Atlantic mid-water trawl (including pair trawl. Northeast bottom trawl. Northeast mid-water trawl (including pair trawl).

List of Symbols Used in Table 4:
* Only applicable to the portion of the fishery operating in U.S. waters; and
^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) at the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification, and no new information has been discovered to change that conclusion. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

This rule contains existing collection-of-information (COI) requirements subject to the Paperwork Reduction Act and would not impose additional or new COI requirements. The COI for the registration of individuals under the MMPA has been approved by the OMB under OMB Control Number 0648–0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or injuries has been approved by OMB under OMB Control Number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS (see **ADDRESSES**). You may also submit comments on these or any other aspects of the collection of information at *https://www.reginfo.gov/public/do/PRAMain.*

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a COI, subject to the requirements of the Paperwork Reduction Act, unless that COI displays a currently valid OMB control number.

This rule has been determined to be not significant for the purposes of Executive Orders 12866 and 13563.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS determined that publishing this LOF qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis'') of the Companion Manual and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an Environmental Impact Statement or Environmental Assessment, as required under NEPA, specific to that action.

This rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

References

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Dated: March 16, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2023–05762 Filed 3–20–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230224–0053; RTID 0648–XC695]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Greater Than or Equal to 50 Feet Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels greater than or equal to 50 feet (15.2 meters (m)) length overall using hook-and-line (HAL) gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2023 Pacific cod total allowable catch (TAC) apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 17, 2023, through 1200 hours, A.l.t., June 10, 2023.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7241.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2023 Pacific cod TAC apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA is 618 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the GOA (88 FR 13238, March 2, 2023).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2023 Pacific cod TAC apportioned to catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 528 mt and is setting aside the remaining 90 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels greater than or equal to 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 15, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 16, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–05781 Filed 3–16–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 54
Tuesday, March 21, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 270, 274, 275, and 279

[Release Nos. 33–11167; 34–97144; IA–6263; IC–34855; File No. S7–04–22]

RIN 3235–AN08

Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies; Reopening of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission (''Commission'') is reopening the comment period for a release (''Investment Management Cybersecurity Release'') proposing new rules under the Investment Advisers Act of 1940 (''Advisers Act'') and the Investment Company Act of 1940 (''Investment Company Act'') that would require registered investment advisers (''advisers'') and investment companies (''funds'') to adopt and implement written cybersecurity policies and procedures reasonably designed to address cybersecurity risks, disclose information about cybersecurity risks and incidents, report information confidentially to the Commission about certain cybersecurity incidents, and maintain related records. Reopening the comment period for the Investment Management Cybersecurity Release will allow interested persons additional time to analyze the issues and prepare their comments in light of other regulatory developments on cybersecurity.

DATES: The comment period for the proposed rules published in the **Federal Register** on March 9, 2022, at 87 FR 13524 is reopened. Comments should be received on or before May 22, 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 S7–04–22 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 S7–04–22. The file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Alexis Palascak, Senior Counsel; Christopher Staley, Branch Chief; or Melissa Roverts Harke, Assistant Director, Investment Adviser Regulation Office, Division of Investment Management, (202) 551–6787 or *IArules@sec.gov*; Y. Rachel Kuo, Senior Counsel; Sara Cortes, Special Senior Counsel; or Brian McLaughlin Johnson, Assistant Director, Investment Company Regulation Office, Division of Investment Management, (202) 551–6792 or *IM-Rules@sec.gov*; or David Joire, Senior Special Counsel, Chief Counsel's Office, Division of Investment Management, (202) 551–6825 or *IMOCC@sec.gov,* Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission has proposed rules 206(4)–9 under the Advisers Act and 38a–2 under the Investment Company Act that would require advisers and funds to adopt and implement cybersecurity policies and procedures addressing a number of elements in the Investment Management Cybersecurity Release.[1] The Investment Management Cybersecurity Release also includes amendments to adviser and fund disclosure requirements to provide current and prospective advisory clients and fund shareholders with improved information regarding cybersecurity risks and cybersecurity incidents. In addition, the proposal would require advisers to report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients, to the Commission on a confidential basis. Finally, the proposal would require advisers and funds to maintain certain records related to the proposed cybersecurity risk management rules. The original comment period for the Investment Management Cybersecurity Release ended on April 11, 2022.

The Commission is proposing other rules and amendments on cybersecurity issues.[2] In the Regulation S–P: Privacy of Consumer Financial Information and Safeguarding Customer Information Release (''Regulation S–P Release''), the Commission is proposing rule

[1] *See* Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies, Securities Act Rel. No. 11028 (Feb. 9, 2022), [87 FR 13524 (Mar. 9, 2022)].

[2] We note that the Commission also proposed rules and amendments regarding an adviser's obligations with respect to outsourcing certain categories of ''covered functions,'' including cybersecurity. *See* Outsourcing by Investment Advisers, Investment Advisers Act Rel. No. 6176 (Oct. 26, 2022), [87 FR 68816 (Nov. 16, 2022)]. We encourage commenters to review that proposal to determine whether it might affect comments on the Investment Management Cybersecurity Release.

amendments that would require brokers and dealers, investment companies, and investment advisers registered with the Commission to adopt written policies and procedures for incident response programs to address unauthorized access to or use of customer information, including procedures for providing timely notification to individuals affected by an incident involving sensitive customer information with details about the incident and information designed to help affected individuals respond appropriately.[3] The Commission also is proposing to broaden the scope of information covered by amending requirements for safeguarding customer records and information, and for properly disposing of consumer report information. In addition, the proposed amendments would extend the application of the safeguards provisions to transfer agents. The proposed amendments would also include requirements to maintain written records documenting compliance with the proposed amended rules. Finally, the proposed amendments would conform annual privacy notice delivery provisions to the terms of an exception provided by a statutory amendment to the Gramm-Leach-Bliley Act.

In the Cybersecurity Risk Management Rule for Broker-Dealers, Clearing Agencies, Major Security-Based Swap Participants, the Municipal Securities Rulemaking Board, National Securities Associations, National Securities Exchanges, Security-Based Swap Data Repositories, Security-Based Swap Dealers, and Transfer Agents Release (''Cybersecurity Release''), the Commission is proposing a new rule and form and amendments to existing recordkeeping rules to require broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents to address cybersecurity risks through policies and procedures, immediate notification to the Commission of the occurrence of a significant cybersecurity incident and, as applicable, reporting detailed information to the Commission about a significant cybersecurity incident, and public disclosures that would improve transparency with respect to cybersecurity risks and significant cybersecurity incidents.[4] In addition, the Commission is proposing amendments to existing clearing agency exemption orders to require the retention of records that would need to be made under the proposed cybersecurity requirements. Finally, the Commission is proposing amendments to address the potential availability to security-based swap dealers and major security-based swap participants of substituted compliance in connection with those requirements.

In the Regulation Systems Compliance and Integrity Release (''Regulation SCI Release,'' and together with the Regulation S–P and Cybersecurity Releases, the ''Related Proposals''), the Commission is proposing amendments to Regulation Systems Compliance and Integrity (''Regulation SCI'') under the Securities Exchange Act of 1934.[5] The proposed amendments would expand the definition of ''SCI entity'' to include a broader range of key market participants in the U.S. securities market infrastructure, and update certain provisions of Regulation SCI to take account of developments in the technology landscape of the markets since the adoption of Regulation SCI in 2014. The proposed expansion would add the following entities to the definition of ''SCI entity'': registered security-based swap data repositories; registered broker-dealers exceeding an asset or transaction activity threshold; and additional clearing agencies exempted from registration. The proposed updates would amend provisions of Regulation SCI relating to: (i) systems classification and lifecycle management; (ii) third party/vendor management; (iii) cybersecurity; (iv) the SCI review; (v) the role of current SCI industry standards; and (vi) recordkeeping and related matters. Further, the Commission is requesting comment on whether significant-volume ATSs and/or broker-dealers using electronic or automated systems for trading of corporate debt securities or municipal securities should be subject to Regulation SCI. The comment period for each of the Related Proposals ends May 22, 2023.

[3] *See* Regulation S–P: Privacy of Consumer Financial Information and Safeguarding Customer Information, Exchange Act Rel. No. 97141 (Mar. 15, 2023).

[4] *See* Cybersecurity Risk Management Rule for Broker-Dealers, Clearing Agencies, Major Security-Based Swap Participants, the Municipal Securities Rulemaking Board, National Securities Associations, National Securities Exchanges, Security-Based Swap Data Repositories, Security-Based Swap Dealers, and Transfer Agents, Exchange Act Rel. No. 97142 (Mar. 15, 2023).

[5] *See* Regulation Systems Compliance and Integrity, Exchange Act Rel. No. 97143 (Mar. 15, 2023).

II. Reopening of the Comment Period

The Commission is reopening the comment period for the proposed rules so that commenters may consider whether there would be any effects of the Related Proposals that the Commission should consider in connection with the proposed rules. Therefore, the Commission is reopening the comment period for Release No. 33–11028 ''Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies'' until May 22, 2023.

By the Commission.

Dated: March 15, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–05766 Filed 3–20–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0127]

RIN 1625–AA00

Safety Zone; Fireworks Display; James River, Newport News, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is establishing a safety zone for navigable waters within a 400-yard radius of a fireworks barge in the James River, Newport News, VA. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the launching of fireworks. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Sector Virginia. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 20, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0127 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed

rulemaking, call or email LCDR Ashley Holm, Chief, Waterways Management Division, Sector Virginia, U.S. Coast Guard; telephone 757–668–5580 email *Ashley.E.Holm@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, Purpose, and Legal Basis

On January 12, 2023, the City of Newport News notified the Coast Guard that it will be conducting fireworks display annually on July 4th from 9 p.m. to 9:30 p.m. each year, to commemorate Independence Day. The fireworks are to be launched from a barge at position 36°58′28.72″ N, 076°26′20.97″ W in the James River in Newport News, VA. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP Sector Virginia has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 400-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 400-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone annually on July 4th from 9 to 9:30 p.m. each year. The safety zone would cover all navigable waters within 400 yards of the fireworks barge located at position 36°58′28.72″ N, 076°26′20.97″ W in the James River in Newport News, VA. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the James River for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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 proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule involves a safety zone lasting only 30 minutes that will prohibit entry within 400 yards of the fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0127 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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. Amend § 165.506 by adding in Table 3 to Paragraph (h)(3) the entry for ''14'' to read as follows:

§ 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.

* * * * *

(h) * * *

(3) Coast Guard Sector Virginia—COTP Zone

TABLE 3 TO PARAGRAPH (h)(3)

*	*	*	* * * *
14	July 4th	James River, Newport News, VA; Safety Zone.	All waters of the James River, within a 400-yard radius around position 36°58′28.72″ N, 076°26′20.97″ W.

* * * * *

Dated: March 13, 2023.

Jennifer A. Stockwell,

Captain, U.S. Coast Guard, Captain of the Port Sector Virginia.

[FR Doc. 2023–05669 Filed 3–20–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Parts 662 and 663

[Docket ID ED–2023–OPE–0009]

RIN 1840–AD90

Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program and Faculty Research Abroad Fellowship Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations that govern the Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program and the Faculty Research Abroad (FRA) Fellowship Program. The proposed changes would revise language proficiency qualifications for DDRA and FRA applicants and clarify the Secretary's discretionary use of eligibility criteria.

DATES: We must receive your comments on or before April 20, 2023.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *Regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *Regulations.gov,* please

contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

The Department strongly encourages you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), the Department strongly encourages you to convert the PDF to ''print-to-PDF'' format, or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions to assist in the rulemaking process.

Federal eRulemaking Portal: Please go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Note: The Department's policy is generally to make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov.* Therefore, commenters should include in their comments only information that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. The Department reserves the right to redact at any time any information that identifies other individuals or that permits readers to identify other individuals.

FOR FURTHER INFORMATION CONTACT: Dr. Pamela J. Maimer, U.S. Department of Education, 400 Maryland Ave. SW, Room 258–24, Washington, DC 20202. Telephone: (202) 453–6891. Email: *pamela.maimer@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: *Invitation to Comment:* We invite you to submit comments regarding the proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We also invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 (explained further below) and their overall requirement of reducing regulatory burden that might result from the proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. The Department also welcomes comments on any alternative approaches to the subjects addressed in the proposed regulations.

During and after the comment period, you may inspect public comments about the proposed regulations by accessing *Regulations.gov.*

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The DDRA Fellowship Program, Assistance Listing Number 84.022A, provides opportunities for doctoral students to engage in dissertation research abroad in modern foreign languages and area studies. The program is designed to contribute to the development and improvement of the study of modern foreign languages and area studies in the United States, and to increase scholars' knowledge of the culture of the people in the countries or regions of research. The program provides fellowships to doctoral candidates who are planning a teaching career in the United States upon completion of their programs and who possess sufficient foreign language skills in the country or countries of research to carry out the dissertation research project. See 34 CFR part 662; 22 U.S.C. 2452(b)(6).

The FRA Fellowship Program, Assistance Listing Number 84.019A, provides opportunities for faculty members teaching modern foreign languages or area studies at U.S. institutions of higher education to engage in research abroad in those languages or areas studied. The program is designed to contribute to the faculty members' foreign language skills and to increase knowledge of the culture of the people in the countries or regions of research. See 34 CFR part 663; 22 U.S.C. 2452(b)(6).

The regulations for both programs were last revised in 1998. Currently, under both the DDRA regulations (§ 662.21(c)(3)) and the FRA regulations (§ 663.21(c)(3)), the Secretary awards points for an applicant's language proficiency in the country or countries of research. Under the current regulations, however, the Secretary does not take into consideration the language proficiency of those who are seeking to conduct research in their native languages through §§ 662.21(c)(3) and 663.21(c)(3). As a consequence, native speakers applying to the DDRA and FRA programs are not eligible to receive qualitative points for language proficiency based on Sections 662.21(c)(3) and 663.21(c)(3) if they propose to conduct research in a host country using their native language.

We propose to revise the DDRA and FRA regulations to provide eligibility for points based on §§ 662.21(c)(3) and 663.21(c)(3) for applicants conducting research projects in any language in which they have proficiency, other than English, to receive up to the full amount of points available for this criterion based on their individual level of proficiency. While the Department had a reasonable basis for the prior version of this criterion that was grounded in the purposes of the DDRA and FRA programs, the Department's updated consideration of these programs as they have evolved over time has led to the conclusion that this change will better promote fairness in the application review process for native speakers of languages other than English.

The proposed revisions would be consistent with the statutory framework for the DDRA and FRA programs. Allowing native speakers to receive points based on §§ 662.21(c)(3) and 663.21(c)(3) for conducting research projects in any language in which they have proficiency, other than English, would support the statutory goal of ''promoting modern foreign language training and area studies in United States schools[.]'' 22 U.S.C. 2452(b)(6).

The proposed changes to these regulations would also bring the DDRA and FRA programs into better alignment with other comparable foreign language and international area studies grants, which do not contain an exception or exclusion for native language skills other than English. The Fulbright U.S. Student and U.S. Scholar Programs

managed by the Department of State, for example, require that an applicant's language skills match the proposed host country's requirements, and that the applicant demonstrate language proficiency commensurate with the nature of the proposed project, without regard to the applicant's native language.

We also propose to revise the DDRA and FRA regulations to adopt a new selection criterion within §§ 662.21(c) and 663.21(c) that will consider the steps taken by the applicant to improve proficiency in the language of study and ensure adequate preparation for the proposed research project. The Department believes this criterion will support the DDRA program's goal of promoting modern foreign language training ''in United States schools, colleges, and universities'' by allowing the applicant to demonstrate the steps taken to improve their language in a domestic academic setting.

Finally, we propose to revise the DDRA and FRA regulations to give the Secretary flexibility under §§ 662.21(c) and 663.21(c) to choose among the regulated selection criteria that will be considered in each application cycle when assessing applicant qualifications. The Department believes this change will increase flexibility when implementing these programs to account for changing Departmental priorities for international and foreign language education, while still allowing the Department to select among the most qualified applicants for funding.

Summary of Proposed Regulations

The proposed changes would—

- Amend § 662.21(c) of the DDRA regulations to allow awarding of full points under criterion (c)(3) to applicants conducting research projects in any language in which they have proficiency, other than English. The proposed change will better promote fairness in the application review process for native speakers of languages other than English.

The proposed regulations would also more fully account for proficiency by considering the steps an applicant has taken to improve their language proficiency in support of the proposed research project. The Department believes this criterion will support the DDRA program's goal of promoting training ''in United States schools, colleges, and universities'' by allowing the applicant to demonstrate the steps taken to improve their language proficiency in a domestic academic setting.

Finally, the proposed regulations would give the Secretary discretion to determine which factors will be considered in reviewing applicant qualifications. The proposed change would increase flexibility to implement the program within statutory requirements and ensure each year's program implementation conforms with Departmental priorities for international and foreign language education set under § 662.21(d). This proposed change would serve to bring DDRA into alignment with other Departmental programs that allow the Secretary to select among the regulated selection criteria when determining which criteria will be emphasized in a particular competition year to account for changing Departmental priorities while still allowing the Department to select among the most qualifies applicants. As proposed, the Secretary would be able to eliminate or assign no value to a selection criterion in a particular competition year without undergoing rulemaking if it was determined that the particular criterion would not further that year's program priorities.

- Amend the FRA regulation at § 663.21(c) to allow awarding of full points for this criterion to applicants conducting research projects in any language in which they have proficiency, other than English. The proposed change will better promote fairness in the application review process for native speakers of languages other than English. The proposed regulations would also take into consideration the steps an applicant has taken to improve their language proficiency in support of the proposed research project.

Finally, the proposed regulations would give the Secretary discretion to determine the value given each regulatory factor when reviewing applicant qualifications. The proposed change would increase flexibility to implement the program within each year's Departmental priorities for international and foreign language education set under § 663.21(d). This change would bring FRA into alignment with other Departmental programs (for example, the Department's general selection criteria under 34 CFR 75.210) that allow the Secretary to select among the regulated selection criteria when determining which criteria will be emphasized in a particular competition year. This proposed change would allow the Secretary to eliminate assign no value to a selection criterion for a particular competition year without undergoing rulemaking if it was determined that the particular criterion would not further program priorities announced under existing § 663.21(d).

DDRA—Section 662.21 What criteria does the Secretary use to evaluate an application for a fellowship?

Statute: 22 U.S.C. 2452(b)(6) authorizes the President to provide for the promotion of modern foreign language training in U.S. schools, colleges, and universities by supporting visits and study in foreign countries by teachers and prospective teachers to improve their language skills and their knowledge of the culture of the people of those countries.

Current Regulation: Section 662.21(c)(3) does not award language proficiency points for DDRA applicants conducting research in English or in the applicant's native language. Section 662.21(c) does not currently provide for consideration of the steps an applicant has taken to improve their language proficiency in support of the proposed research project.

Proposed Regulation: We propose to amend § 662.21(c)(3) to allow awarding full points for this criterion to applicants conducting research projects in any language in which they have proficiency, other than English. Additionally, we propose to add as new paragraph (c)(4): a selection criterion that would take into consideration the steps an applicant has taken to improve language proficiency in support of the proposed research project. Finally, we propose revising the introductory language of § 662.21(c) to allow consideration of ''one or more'' of the listed criteria. This proposed revision would provide the Secretary discretion when reviewing the qualifications of applicants to align regulated selection criteria with Departmental priorities for a particular competition year.

Reasons: The proposed regulations would bring DDRA into line with other comparable foreign language and international area studies grant programs, which generally do not contain an exception or exclusion for applicants who pursue a course of study in their native language. Additionally, proposed changes to the regulation are designed to improve equitable access for applicants demonstrating doctoral level proficiency in the language of the country in which they seek to conduct research.

The Department has determined that the current regulation overemphasizes the method of language acquisition over language proficiency. The current regulations also have the consequence of making individuals whose native language matches the host country of research ineligible for language proficiency points under § 662.21(c)(3) As the ultimate goal of these programs

is ''promoting modern foreign language training and area training[,]'' the Department has determined that the DDRA program is better served by selecting linguistically proficient candidates for doctoral level research, regardless of their method of acquisition of language proficiency.

The proposed addition to § 662.21(c) of a new selection criterion would also take into consideration the steps an applicant has taken to improve their language proficiency in support of the proposed research project to more fully account for proficiency obtained through an applicant's academic efforts and ensure adequate preparation for the proposed research project. The Department believes this proposed new criterion will support the DDRA program's goal of promoting training ''in United States schools, colleges, and universities'' by allowing the applicant to demonstrate the steps taken to improve their language proficiency in a domestic academic setting.

Finally, the proposal providing the Secretary discretion to choose among the regulated selection criteria that will be considered in each application cycle when reviewing applicant qualifications is expected to increase flexibility when implementing the program to account for changing Departmental priorities for international and foreign language education. This proposal is generally consistent with the Secretary's authority for all direct grant programs under 34 CFR 75.201 where ''in the application package or a notice published in the **Federal Register**, the Secretary informs applicants of [. . .] the selection criteria chosen[.]'' This change would bring DDRA into alignment with other Departmental programs that allow the Secretary to select among the regulated selection criteria when determining which criteria will be used in a particular competition year.

FRA—Section 663.21 What criteria does the Secretary use to evaluate an application for a fellowship?

Statute: 22 U.S.C. 2452(b)(6) authorizes the President to provide for the promotion of modern foreign language training in U.S. schools, colleges, and universities by supporting visits and study in foreign countries by teachers and prospective teachers to improve their language skills and their knowledge of the culture of the people of those countries.

Current Regulation: Section 663.21(c)(3) does not award language proficiency points for applicants conducting research in English or in the applicant's native language. Section 663.21(c) does not provide for consideration of the steps an applicant has taken to improve their language proficiency in support of the proposed research project.

Proposed Regulation: We propose to amend § 663.21(c)(3) to allow awarding full points for this criterion to applicants conducting research projects in any language in which they have proficiency, other than English. We also propose to add to § 663.21(c) a new selection criterion that would take into consideration the steps an applicant takes to develop improved language proficiency in support of the proposed research project. Finally, we propose revising the introductory language of § 663.21(c) to allow consideration of ''one or more'' of the listed criteria, thereby giving the Secretary discretion to determine what factors will be considered in reviewing the qualifications of applicants based on that year's priorities.

Reasons: The proposed regulations would bring FRA into line with other comparable foreign language and international area studies grant programs, which generally do not contain an exception or exclusion for native language skills other than English. Additionally, proposed changes to § 663.21(c) should better improve equitable access for applicants demonstrating advanced level proficiency in the language of the country in which they seek to conduct research.

The Department overemphasizes the method of language acquisition over language proficiency. The current regulations also have the consequence of making individuals whose native language matches the host country of research ineligible for language proficiency points under § 663.21. As the ultimate goal of these programs is ''promoting modern foreign language training and area training[,]'' the Department has determined that the FRA program is better served by selecting among the most linguistically proficient candidates for faculty research, regardless of their method of acquisition of language proficiency.

The proposed addition to § 663.21(c) of a new selection criterion would consider the steps taken by the applicant to improve proficiency in the language of study and ensure adequate preparation for the proposed research project. The Department believes this criterion will support the FRA program's goal of promoting training ''in United States schools, colleges, and universities'' by allowing the applicant to demonstrate the steps taken to improve their language proficiency in a domestic academic setting.

Finally, we propose providing the Secretary discretion to choose among the regulated selection factors considered when reviewing the qualifications of applicants. This proposal is expected to increase flexibility in implementing the program within the parameters of Departmental program priorities for international and foreign language education set under § 663.21(d). This proposal is generally consistent with the Secretary's authority for all direct grant programs under 34 CFR 75.201 where ''in the application package or a notice published in the **Federal Register**, the Secretary informs applicants of [. . .] the selection criteria chosen[.]'' This change would bring FRA into alignment with other Departmental programs that allow the Secretary to select among the regulated selection criteria when determining which criteria will be used in a particular competition year.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule),

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency,

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed the proposed regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed regulations only on a reasoned determination that their benefits justify any associated costs. Based on the analysis that follows, the Department believes that the proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits

The potential costs to applicants, grant recipients, and the Department associated with the proposed regulatory change would be minimal, while there would be greater potential benefits to applicants, grant recipients, and the Department.

We anticipate a minimal increase of 10–15 DDRA and FRA program applications as a result of eliminating the native language proficiency exclusion and foresee minimal impact to the Department's time and cost for reviewing these additional applications.

Over the last five years, the amount of funding for the DDRA program has ranged from approximately $3.5 to 5 million, with an average of 200 grant applications received per year, and an average of fifty percent of applications ultimately receiving grant awards. The number of applications and awards has remained relatively steady across the last five years. The Department expects an increase of 10–15 applications per year based on the number of applicants that have applied to study a geographic area that shares their native language skills in recent years.

An increase in the number of applicants or awards granted could result in minimal additional costs to Department in securing readers to review applications. The Department pays readers $1,200 to review applications and the number of applications per reader ranges from 15 to a maximum of 22 applications. An increase in 10–15 applications could increase cost by an additional $1,200 to secure an additional reader. However, the number of applications for the DDRA program has declined over the last several years from a height of almost 250 to a low of just over 150 in 2022. As a result, an increase in immediate applications would not result in any overall comparative additional costs, as a nominal increase in applications would restore DDRA to the average amount of applications received in prior years. We anticipate no additional costs to grant recipients, as we would continue to pay for grant activities with program funds.

Last fiscal year (FY) 2022, the Department conducted an FRA competition and made fellowship awards to 22 recipients totaling $1,265,000. The FY 2022 competition was the first competition in over a decade for the FRA program. The previous Fulbright-Hays appropriation had decreased from $15.6 million in FY 2010 to $7.5 million in FY 2011, and the nearly fifty percent decrease in available funds made it impossible to conduct competitions and make awards under all four Fulbright-Hays programs. As a result, the FRA program was suspended from 2011 to 2021. The funding level for the Fulbright-Hays programs had remained relatively level at $7.1 million for the past several years. In FY 2022, we received a modest increase to $8.1 million, which enabled us to re-activate the FRA program. However, we will not conduct the FRA competition in FY 2023. We do anticipate conducting another FRA competition in FY 2024, contingent upon available funds. Given that the FRA competition has only been conducted once in the last decade, trends in those program applications cannot be measured.

The benefits of amending these regulations include (1) better aligning DDRA and FRA applicant qualifications with other comparable foreign language and international area student grant programs to focus on language proficiency and (2) increasing equitable access to research abroad for those demonstrating language proficiency in the language of the countries in which their doctoral-level or faculty research study will occur, regardless of the applicant's native language. In addition, we expect that this flexibility may result in more applications from applicants speaking a wider variety of native language, as well as more applications recommended for funding.

The proposed regulations also would more fully account for proficiency by adding a new selection criterion that considers an applicant's academic record and the steps taken by the applicant to improve proficiency in the language of study and ensure adequate preparation for the proposed research project. The Department believes this criterion will support the DDRA and FRA programmatic goal of promoting training ''in United States schools, colleges, and universities'' by allowing the applicant to demonstrate the steps taken to improve their language proficiency in an academic setting. We do not anticipate any changes in the number of applications received as a result of this change, nor do we anticipate any costs to grant recipients. As a result, we do not anticipate any burden cost with the addition of this particular criterion.

Finally, providing the Secretary discretion to determine the factors that will be considered when reviewing the qualifications of applicants would increase flexibility to implement the

program within statutory requirements while adapting to changing Departmental priorities for international and foreign language education. This change would bring DDRA and FRA into alignment with other Departmental programs that allow the Secretary to select among the regulated selection criteria when determining which criteria will be emphasized in a particular competition year. We do not anticipate any cost to the government for this change, beyond nominal costs associated with updating the application package. We do not anticipate any changes in the number of applications received as a result of this change, nor do we anticipate any costs to grant recipients. As a result, we do not anticipate any burden cost with the addition of this flexibility regarding the selection criteria.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Alternatives Considered

In addition to allowing native speakers to receive points based on sections 662.21(c)(3) and 663.21(c)(3), we considered allowing English as the language for the country of research, which is currently restricted, but believe that maintaining the requirement that applicants as part of the application package demonstrate proficiency in a language ''other than English'' more appropriately meets the statutory goal of ''promoting modern foreign language training and area studies in United States schools[.]'' 22 U.S.C. 2452(b)(6). We also considered continuing to solely provide points for language proficiency without consideration of additional steps taken to improve proficiency. However, the inclusion of a criterion that considers steps taken to improve proficiency better meets the statutory goal of promoting training ''in United States schools, colleges, and universities'' by allowing the applicant to demonstrate the steps taken to improve their language proficiency in a domestic academic setting. We believe that replacing the exclusion for native language skills other than English with a focus on both an applicant's current foreign language skills and efforts to master the language of study will be more effective in increasing the capabilities and diversity of applicants and participants, while remaining consistent with the statutory goals of these programs.

Clarity of the Regulation

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make the proposed regulation easier to understand, including answers to questions such as the following:

(a) Are the requirements in the proposed regulation clearly stated?

(b) Does the proposed regulation contain technical terms or other wording that interferes with its clarity?

(c) Does the format of the proposed regulation (use of headings, paragraphing, etc.) aid or reduce its clarity?

(d) Would the proposed regulation be easier to understand if we divided it into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 106.9 Dissemination of policy.)

(e) Could the description of the proposed regulation in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulation easier to understand? If so, how?

(f) What else could we do to make the proposed regulation easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by the proposed regulations are institutions of higher education (IHEs) that would submit applications to the Department under this program. The proposed regulations would not have a significant economic impact on the small entities affected because they would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds. We invite the public to comment on our certification that these regulations would not have a significant economic impact on a substantial number of small entities.

The Small Business Administration (SBA) defines ''small institution'' using data on revenue, market dominance, tax filing status, governing body, and population. Most entities to which the Office of Postsecondary Education's (OPE) regulations apply are postsecondary institutions; however, many of these institutions do not report such data to the Department. As a result, the Department defines ''small entities'' by reference to enrollment,[1] to allow meaningful comparison of regulatory impact across all types of higher education institutions.[2]

[1] Two-year postsecondary educational institutions with enrollment of less than 500 full-time equivalent (FTE) and four-year postsecondary educational institutions with enrollment of less than 1,000 FTE.

[2] In some prior regulations, the Department categorized small businesses based on tax status. Those regulations defined ''non-profit organizations'' as ''small organizations'' if they were independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organization as small and no public institutions as small. Under the previous definition, proprietary institutions were considered small if they were independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. Using FY 2017 Integrated Postsecondary Education Data System (IPEDS) finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition applies the same metric to all types of institutions, allowing consistent comparison across all types.

TABLE 1—SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	328	1182	27.75
2-year	Private	182	199	91.46
2-year	Proprietary	1777	1952	91.03
4-year	Public	56	747	7.50
4-year	Private	789	1602	49.25
4-year	Proprietary	249	331	75.23
Total		3381	6013	56.23

Source: 2018–19 data reported to the Department.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 662.21(c)(3) and 663.21(c)(3) of the proposed regulations contain information collection requirements. Under the PRA the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control number assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

The information collection that would be impacted by these proposed regulatory changes is the Application for the DDRA and FRA Programs (1840–0005). Under the DDRA and FRA programs, individual scholars apply through eligible institutions for an institutional grant to support the research fellowship. These institutions administer the program, in cooperation with the Department, pursuant to sections 102(b)(6) and 104(e)(1) of the Mutual Educational and Cultural Exchange Act of 1961, 34 CFR parts 662 and 663, the Policy Statements of the J. William Fulbright Foreign Scholarship Board (FSB), and the Education Department General Administrative Regulations (EDGAR).

The data requested are used by the Department, U.S. foreign language and area studies specialists, the Department of State, U.S. Embassies, Fulbright Commissions, host country officials and scholars, and the FSB in determining the academic qualifications and suitability of the individual applicant, potential political sensitivity and feasibility of the project in the host country, research climate, and adequacy of the proposed budget.

Grants under these programs are awarded annually.

Program	Number of respondents	Average burden hours per response	Total burden hours	Estimated respondent average hourly wage	Total annual costs (hourly wage × total burden hours)
DDRA Student Respondent	325	25	8,125	$0	$0
DDRA Institution Project Director	50	25	1,250	47.20	59,000
FRA Faculty Respondent	70	25	1,750	36.33	63,578
FRA Institution Project Director	50	15	750	47.20	35,400
Annualized Totals	495		11,875		157,978

The hour burden of individual respondents is estimated at an average of 25 hours for each student. The cost burden for student applicants is zero. We estimate that the changes to the regulations may result in a small increase in the number of DDRA student respondents from 310 to 325. When multiplied by 25 hours, this results in an increase in DDRA student burden hours from 7750 to 8125.

The hour burden of the 50 institutional project directors is estimated at 25 hours for each DDRA application. The cost burden for institutional DDRA applicants is $59,000. These estimates are based on feedback from DDRA respondents during the last three years.

The hour burden of individual respondents is estimated at an average of 25 hours for each faculty member. The cost burden for faculty applicants is $63,578. The hour burden of the 50 institutional project directors is estimated at 15 hours for each FRA application. The cost burden for institutional FRA applicants is $35,000. These estimates are based on feedback from FRA respondents during the last three years.

These estimates incorporate the completion of the following tasks:

1. Register in the G5 e-Application system (project director)
2. Complete official forms (student/faculty and project director)
3. Develop the application narrative and budget (student/faculty)
4. Screen individual completed applications (project director)
5. Transmit completed individual applications to US/ED in a single submission via G5 (project director)

The difference between the hour burdens for the DDRA and FRA project directors is due to the fact that the FRA program is smaller and has fewer applicants. DDRA project directors are generally processing applications for multiple students, whereas FRA project directors are generally processing an application for one faculty member.

The data in the table is an estimate of the time it takes for both institutional project directors and individual student and faculty respondents to complete these tasks.

The DDRA and FRA application (1840–0005) would be affected by the regulatory changes in the following ways:

- We would change the application package to eliminate the native language proficiency exclusion.
- We would include additional language in the DDRA and FRA selection criteria (under §§ 662.21(c)(3) and 663.21(c)(3)) which would require minimal changes on the technical review forms.

We estimate that the changes to the regulations may result in a small increase in the number of DDRA student respondents from 310 to 325. When multiplied by 25 hours, this results in an increase in DDRA student burden hours from 7750 to 8125. We estimate that costs would increase for individuals or institutions as a result of these minor changes. The annual burden hours for institutions remains at 2000, and the annual burden hours for individuals increases to 9875, for a total of 11875 annual burden hours under OMB Control Number 1840–0005. The annual cost burden remains at $157,978.

Regulatory section	Information collection	OMB Control No. and estimated burden
34 CFR § 662.21(c)(3) and 34 CFR § 663.21(c)(3).	These proposed regulatory provisions would require changing the application package to eliminate the native language proficiency exclusion.	1840–0005. The number of respondents and the number of annual burden hours would increase to 495 and 11,875 respectively, and the annual burden costs would remain the same at $157,978.
34 CFR § 662.21(c)(3) and 34 CFR § 663.21(c)(3).	These proposed regulatory provisions would require the inclusion of additional language in the DDRA and FRA selection criteria to take into consideration steps an applicant has taken to improve their language proficiency.	1840–0005. The number of respondents and the number of annual burden hours would increase to 495 and 11,875 respectively, and the annual burden costs would remain the same at $157,978.

We have prepared Information Collection Requests for these information collection requirements. If you wish to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notification. Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at *www.regulations.gov.*

We consider your comments on this proposed collection of information in—

○ Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;

○ Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;

○ Enhancing the quality, usefulness, and clarity of the information we collect; and

○ Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by April 20, 2023. This does not affect the deadline for your comments to us on the proposed regulations. If your comments relate to the Information Collection Requests for these proposed regulations, please specify the Docket ID number and indicate ''Information Collection Comments'' on the top of your comments.

Intergovernmental Review

The proposed regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act (GEPA), 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means 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. The proposed regulations do not have federalism implications.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF you must have Adobe Acrobat Reader, which is available at no cost to the user at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects

34 CFR Part 662

Colleges and universities, Education, Educational research, Educational study programs, Grant programs—education, Scholarships and fellowships.

34 CFR Part 663

Colleges and universities, Education, Educational research, Educational study

programs, Grant programs—education, Scholarships and fellowships, Teachers.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 662 and 663 of title 34 of the Code of Federal Regulations as follows:

34 CFR PART 662—FULBRIGHT-HAYS DOCTORAL DISSERTATION RESEARCH ABROAD FELLOWSHIP PROGRAM

■ 1. The authority citation for part 662 continues to read as follows:

Authority: Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

■ 2. Amend § 662.21 by:
■ a. Revising paragraphs (c) introductory text and (c)(3);
■ b. Redesignating paragraph (c)(4) as (c)(5); and
■ c. Adding a new paragraph (c)(4).

The revisions and addition read as follows:

§ 662.21 What criteria does the Secretary use to evaluate an application for a fellowship?

* * * * *

(c) *Qualifications of the applicant.* The Secretary reviews each application to determine the qualifications of the applicant. In coordination with any priorities established under paragraph (d) of this section, the Secretary considers one or more of the following—

* * * * *

(3) The applicant's proficiency in one or more of the languages (other than English) of the host country or countries of research;

(4) The extent to which the applicant's academic record demonstrates steps taken to further improve advanced language proficiency to overcome any anticipated language barriers relative to the proposed research project;

(5) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's references or previous overseas experience, or both.

* * * * *

34 CFR PART 663—FULBRIGHT-HAYS FACULTY RESEARCH ABROAD FELLOWSHIP PROGRAM

■ 3. The authority citation for part 663 continues to read as follows:

Authority: Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 (Fulbright-Hays Act), 22 U.S.C. 2452(b)(6), unless otherwise noted.

■ 4. Amend § 663.21 by:
■ a. Revising paragraphs (c) introductory text and (c)(3);
■ b. Redesignating paragraph (c)(4) as (c)(5); and
■ c. Adding a new paragraph (c)(4).

The revisions and addition read as follows:

§ 663.21 What criteria does the Secretary use to evaluate an application for a fellowship?

* * * * *

(c) *Qualifications of the applicant.* The Secretary reviews each application to determine the qualifications of the applicant. In coordination with any priorities established under paragraph (d) of this section, the Secretary considers one or more of the following—

* * * * *

(3) The applicant's proficiency in one or more of the languages (other than English) of the host country or countries of research;

(4) The extent to which the applicant's academic record demonstrates steps taken to further improve advanced language proficiency to overcome any anticipated language barriers relative to the proposed research project;

(5) The applicant's ability to conduct research in a foreign cultural context, as evidenced by the applicant's previous overseas experience, or documentation provided by the sponsoring institution, or both.

* * * * *

[FR Doc. 2023–05725 Filed 3–20–23; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[GN Docket No. 18–122; GN Docket No. 23–97; DA 23–204; FR ID 131565]

Wireless Telecommunications Bureau Seeks Comment on C-Band Phase II Certification Procedures

AGENCY: Federal Communications Commission.

ACTION: Notification.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB or Bureau) seeks comment on its proposed procedures related to the filing of Phase II Certifications of Accelerated Relocation (Certifications) and on implementation of the Commission's incremental reduction plan for Phase II Accelerated Relocation Payments (ARPs) as part of the ongoing transition of the 3.7 GHz band. Filers responding to this Public Notice should submit comments in GN Docket No. 23–97.

DATES: Interested parties may file comments on or before April 20, 2023.

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

You may submit comments, identified by WP Docket No. 07–100, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy*.

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

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Susan Mort of the Wireless Telecommunications Bureau, at (202) 418–2429 or *Susan.Mort@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice, *Wireless*

Telecommunications Bureau Seeks Comment on C-Band Phase II Certification of Accelerated Relocation Procedures and Implementation of the Commission's Incremental Reduction Plan for Phase II Accelerated Relocation Payments, released on March 13, 2023. The full text of this document is available for public inspection online at *https://www.fcc.gov/document/wtb-seeks-comment-c-band-phase-ii-certification-procedures*.

1. With this Public Notice, the Bureau proposes adopting filing procedures modeled after those previously adopted for Phase I to allow eligible space station operators to submit Certifications, and stakeholders to file related challenges, with respect to the Phase II migration of incumbent services in this band. The Bureau also seeks comment on potential adjustments to the Phase I procedures that we believe will create more transparency and efficiency in the Phase II Certification review process such as requiring a specific level of detail in incumbent earth station operator's Certifications and/or requiring information be provided in a standardized format. The Bureau also seeks comment on a potential threshold trigger before Phase II Certifications may be submitted for validation. With relation to the Phase II incremental reduction plan, the Bureau proposes adopting an approach that parallels the Phase I process for calculating the incremental reduction of an eligible space station operator's ARP should it fail to meet the Phase II Accelerated Relocation Deadline.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2023–05601 Filed 3–20–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES1111090FEDR 234]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for 4 Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on petitions to add four species to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions to list the common hippopotamus (*Hippopotamus amphibius*), Morro Bay polyphyllan scarab beetle (*Polyphylla morroensis*), Inyo rock daisy (*Perityle inyoensis;* synonym *Laphamia inyoensis*), and roughhead shiner (*Notropis semperasper*) present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we are initiating status reviews of these species to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we request scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether or not the petitioned actions are warranted, in accordance with the Act.

DATES: These findings were made on March 21, 2023. As we commence our status reviews, we seek any new information concerning the status of, or threats to, the common hippopotamus, Morro Bay polyphyllan scarab beetle, Inyo rock daisy, and roughhead shiner, or their habitats. Any information we receive during the course of our status reviews will be considered.

ADDRESSES:

Supporting documents: Summaries of the basis for the petition findings contained in this document are available on *https://www.regulations.gov* under the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the common hippopotamus, Morro Bay polyphyllan scarab beetle, Inyo rock daisy, and roughhead shiner, or their habitats, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment.'' If your information will fit in the provided comment box, please use this feature of *https://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see table under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Submitted for a Status Review, below).

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Common hippopotamus	Bridget Fahey, Chief, Division of Conservation and Classification, 703–358–2163, *bridget_fahey@fws.gov*.
Morro Bay polyphyllan scarab beetle	Catherine Darst, Assistant Field Supervisor, Ventura Fish and Wildlife Office, 805–677–3318, *cat_darst@fws.gov*.
Inyo rock daisy	Scott Sobiech, Field Supervisor, Carlsbad Fish and Wildlife Office, 760–431–9440, *scott_sobiech@fws.gov*.
Roughhead shiner	Matt Hinderliter, Regional Listing Coordinator, Northeast Regional Office, 413–253–8240, *matthew_hinderliter@fws.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:

Information Submitted for a Status Review

You may submit your comments and materials concerning the status of, or threats to the common hippopotamus, Morro Bay polyphyllan scarab beetle, Inyo rock daisy, and roughhead shiner, or their habitats, by one of the methods listed above in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing these findings, will be available for public inspection on *https://www.regulations.gov.*

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (*i.e.,* ''list'' a species), remove a species from the List (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)). A positive 90-day petition finding does not indicate that the petitioned action is warranted; the finding indicates only that the petitioned action may be warranted and that a full review should occur.

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); and

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets the definition of an endangered species or threatened species under the Act.

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248; July 27, 2016).

We note that designating critical habitat is not a petitionable action under the Act. Petitions to designate critical habitat (for species without existing critical habitat) are reviewed under the Administrative Procedure Act and are not addressed in this finding (see 50 CFR 424.14(j)). To the maximum extent prudent and determinable, any proposed critical habitat will be addressed concurrently with a proposed rule to list a species, if applicable.

Summaries of Petition Findings

The petition findings contained in this document are listed in the table below, and the basis for each finding, along with supporting information, is available on *https://www.regulations.gov* under the appropriate docket number.

TABLE OF INTERNET SEARCH INFORMATION FOR STATUS REVIEWS FOR FOUR SPECIES PETITIONED FOR FEDERAL LISTING

Common name	Docket No.	URL to docket on *https://www.regulations.gov*
Common hippopotamus	FWS–HQ–ES–2022–0158	*https://www.regulations.gov/FWS-HQ-ES-2022-0158*.
Morro Bay polyphyllan scarab beetle	FWS–R8–ES–2022–0159	*https://www.regulations.gov/FWS-R8-ES-2022-0159*.
Inyo rock daisy	FWS–R8–ES–2022–0160	*https://www.regulations.gov/FWS-R8-ES-2022-0160*.
Roughhead shiner	FWS–R5–ES–2022–0161	*https://www.regulations.gov/FWS-R5-ES-2022-0161*.

Evaluation of a Petition To List the Common Hippopotamus

Species and Range

The common hippopotamus (*Hippopotamus amphibius*). Historical range: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Côte d'Ivoire, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Malawi, Mali, Mauritania, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Eswatini (Swaziland), Tanzania, Togo, Uganda, Zambia, Zimbabwe. Current range: Hippos are extant in the historical range states listed with the exceptions of Algeria, Egypt, Liberia, and Mauritania where they are regionally extirpated. It is unknown if they still occur in Sudan.

Petition History

On March 23, 2022, we received a petition from The Humane Society of the United States, Humane Society International, Humane Society Legislative Fund, and Center for Biological Diversity, requesting that the common hippopotamus be listed as an endangered or a threatened species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information

The petitioners provided credible information indicating potential threats to common hippopotamus populations from habitat loss (Factor A) due to land conversion for agricultural and human settlements, the resulting demand for irrigation and water, climate change impacts, and war. The petitioners provided information that indicates the threats under Factor A are negatively impacting common hippopotamus populations in much of the species' range, and this, in combination with the species' ecology, makes the common hippopotamus particularly vulnerable to habitat loss, which may be threatening the species. The petition provides information on additional threats from legal international trade, poaching, disease, predation, and traditional and medicinal use of hippopotamus parts that we will investigate further during our full status review.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. We considered the factors under section 4(a)(1) of the Act and assessed the effect that the threats identified within the factors—as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts—may have on the species now and in the foreseeable future. Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the common hippopotamus (*Hippopotamus amphibius*) under the Act may be warranted due to potential threats associated with habitat loss and degradation due to land conversion and urbanization, demand for irrigation and water, climate change, and war (Factor A). The petitioners also presented information suggesting overutilization from legal international trade and poaching (Factor B), disease and predation (Factor C), and traditional and medicinal use of hippopotamus parts (Factor E) may be threats to the common hippopotamus and that existing regulatory mechanisms, particularly as they pertain to trade and poaching, may be inadequate to address the impacts of these threats (Factor D). We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–HQ–ES–2022–0158 under the Supporting Documents section.

Evaluation of a Petition To List the Morro Bay Polyphyllan Scarab Beetle

Species and Range

Morro Bay polyphyllan scarab beetle (*Polyphylla morroensis*); San Luis Obispo County, California.

Petition History

On January 7, 2022, we received a petition from Michael Walgren, a resident of San Luis Obispo County, California, requesting that the Morro Bay polyphyllan scarab beetle be listed as a threatened species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information

The petitioner provided credible information indicating that urban development is a threat to the Morro Bay polyphyllan scarab beetle, and there is substantial information related to the effects of urban development indicating that the petitioned action may be warranted (Factor A). Further, the petition claims that future development as currently proposed (Jodi McGraw Consulting 2019, entire; U.S. Fish and Wildlife Service 2019, entire) would be a threat to the species, as urban development and habitat loss would increase (Factor A). The petition thus presents substantial information related to the current and future effects of urban development (Factor A), indicating that the petitioned action may be warranted.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. We considered the factors under section 4(a)(1) of the Act and assessed the effect that the threats identified within the factors—as may be ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts—may have on the species now and in the foreseeable future. Based on our review of the petition and readily available information regarding Factor A, we find that the petition presents substantial scientific or commercial information indicating that listing the Morro Bay

polyphyllan scarab beetle (*Polyphylla morroensis*) as a threatened or endangered species may be warranted. The petitioner also presented information suggesting lights and landscaping may be threats to the Morro Bay polyphyllan scarab beetle (Walgren 2022b, pp. 5–7). The Service will fully evaluate these and all other potential threats, including the inadequacy of existing regulatory mechanisms (Factor D), during our 12-month status review, pursuant to the Act's requirement to review the best available scientific information when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2022–0159 under the Supporting Documents section.

Evaluation of a Petition To List Inyo Rock Daisy

Species and Range

Inyo rock daisy (*Perityle inyoensis;* synonym *Laphamia inyoensis*). Historical range: southern Inyo Mountains, Inyo County, California. Current range: southern Inyo Mountains, Inyo County, California.

Petition History

On February 2, 2022, we received a petition with the same date from Maria Jesus, the Center for Biological Diversity, and the California Native Plant Society, requesting that Inyo rock daisy be listed as an endangered or threatened species and that critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information

We reviewed the petition, sources cited in the petition, and other readily available information in our files. The petitioned entity is Inyo rock daisy (*Perityle inyoensis*), which occurs in the southern Inyo Mountains of Inyo County, California. This plant species is recognized in the taxonomic literature. The petitioners request that we list Inyo rock daisy as an endangered or threatened species.

We find that the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted due to potential threats from mining and development due to habitat loss and damage, invasive plant species due to competition, and climate change because of increased water stress and range shifts. We will fully evaluate these potential threats during our 12-month status review of the species.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. We considered the factors under section 4(a)(1) of the Act and assessed the effect that the threats identified within the factors—as may be ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts—may have on the species now and in the foreseeable future. Based on our review of the petition and readily available information regarding mining (Factor A), development (Factor A), invasive plant species (Factor E), and climate change (Factor E), we find that the petition presents substantial scientific or commercial information indicating that the petitioned action to list the Inyo rock daisy (*Perityle inyoensis*) as an endangered or threatened species may be warranted. The petitioners also presented information suggesting that genetic swamping and expected self-incompatibility, as the number of individuals decrease limiting reproduction, may be threats to Inyo rock daisy. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best available scientific information when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2022–0160 under the Supporting Documents section.

Evaluation of a Petition To List the Roughhead Shiner

Species and Range

The roughhead shiner (*Notropis semperasper*) is a small, olive-colored minnow named for the distinctive bumps on its head, that historically and currently lives in the James River watershed in Virginia.

Petition History

On March 25, 2022, we received a petition from the Center for Biological Diversity, requesting that the roughhead shiner be listed as an endangered or threatened species and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information

After thorough examination of the petition, we find that the petitioner provided credible information indicating past and current threats to individuals of the species due to other natural or humanmade factors. Under Factor A, the petition presents citations demonstrating that habitat modification from urbanization and forest management activities may degrade water quality to the point where it negatively impacts the species. Under Factor E, the petition presents citations demonstrating that the introduced nonnative telescope shiner (*Notropis telescopus)* may outcompete the roughhead shiner and cause extirpations of the roughhead shiner at those sites.

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. We considered the credible information that the petition provided regarding effects of the threats that fall within the factors under the Act's section 4(a)(1) as potentially ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Based on our review of the petition and readily available information regarding habitat modification from siltation and/or contamination (Factor A), and competition from the introduced telescope shiner (Factor E), we find that the petition presents substantial scientific or commercial information indicating that listing the roughhead shiner (*Notropis semperasper*) as an endangered or threatened species may be warranted. We will fully evaluate this potential threat during our 12-month status review, pursuant to the Act's requirement to review the best available scientific and commercial information when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R5–ES–2022–0161 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under section 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the common hippopotamus, Morro Bay polyphyllan scarab beetle, Inyo rock daisy, and roughhead shiner present substantial scientific or commercial information

indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Signed:

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–05610 Filed 3–20–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 54
Tuesday, March 21, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Federal Register Notice: USAID COVID–19 Performance Monitoring

AGENCY: United States Agency for International Development (USAID).

ACTION: Notice of request for OMB approval.

SUMMARY: In accordance with the Information Collection Review procedures of the Paperwork Reduction Act of 1995 (PRA), the United States Agency for International Development (USAID), is announcing that it has submitted a request to the Office of Management and Budget (OMB) for approval to inform technical approaches to implementing USAID's COVID–19 Implementation Plan. If granted, this approval will be valid for three years from the date of approval.

DATES: If this request for approval is granted, USAID plans to collect performance data beginning on or about May 31, 2023 and expected to end May 31, 2026.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Megan McGuire, *mmcguire@usaid.gov,* +1 (202) 705 6136.

SUPPLEMENTARY INFORMATION: The proposed collection would request reporting from USAID award recipients (Implementing Partners) of performance indicators to be submitted on the frequency designated in their awards. This request is an extension of the six-month emergency OMB approval granted on November 23, 2022 and ending May 31, 2023 (ICR reference #: 202211–0412–001) which allows for mandatory reporting of COVID–19 performance indicators. This activity-level information, in conjunction with contextual data, allows USAID to track progress against the objectives of the U.S. Global COVID–19 Response and Recovery Framework. It will be used for adaptive management, evidence-based strategic decision-making, and accountability. Information will be requested of contracts and grants in the Global VAX surge countries (Angola, Côte d'Ivoire, Eswatini, Ghana, Lesotho, Nigeria, Senegal, South Africa, Tanzania, Uganda, and Zambia) and for contracts and grants receiving more than $500,000 in COVID–19 funds obligated after 9/1/2022 in Ethiopia, Liberia, Madagascar, Malawi, Mozambique, Haiti and the Philippines.

Description of Proposed Use of Information

The performance data would supplement contextual, country-level data currently analyzed by USAID and will provide critical, timely insight into the Agency's COVID–19 response. The collection and reporting of performance indicators by USAID's IPs will facilitate adaptive management, strategic planning, and ensure that COVID–19 response activities are continually aligned with the Agency's primary objectives and the evolving nature of the pandemic. The data will inform the strategic and operational approaches of both the Agency's Washington offices and field-based Missions involved in the COVID–19 response.

Time Burden

USAID estimates an annual time burden of 333 hours per award or 83 hours per response, assuming most awards report on a quarterly basis. USAID expects that a total of 46 awards will be subject to the information collection requirements; for these awards, the time burden is expected to total 15,318 hours per year.

Beth Tritter,

Director, USAID COVID–19 Response Team.

[FR Doc. 2023–05693 Filed 3–20–23; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Collaborative Forest Landscape Restoration Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Collaborative Forest Landscape Restoration Advisory Committee will hold a public meeting according to the details shown below. The committee is authorized under the Omnibus Public Land Management Act of 2009 and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to provide advice and recommendations to the Secretary of Agriculture (Secretary) on the selection of collaborative forest landscape restoration proposals. General information can be found at the following website: *https://www.fs.usda.gov/restoration/CFLRP/advisory-panel.shtml.*

DATES: The meeting will be held on April 4, 5 and 6, 2023, from 8:00am to 5:00 p.m. each day, Mountain Daylight Time.

All commmittee meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written and Oral Comments:

Individuals wishing to make an oral statement at any meeting should make a request in writing by March 30, 2023, to be scheduled on the agendas. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or by April 21, 2023. Written comments and requests for time for oral comments must be sent to Bryce Esch, 1824 S Thompson Street, Flagstaff, AZ 86001 or by email to *Bryce.Esch@usda.gov.*

ADDRESSES: The meetings are open to the public and will be held at the Cesar Chavez Memorial Building, Room 221, 1244 Speer Boulevard, Denver, Colorado 80204. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Chuck Oliver, Designated Federal Officer (DFO), by phone at 406–370–0174 or email at *Charles.Oliver@usda.gov* or Bryce Esch, Committee Coordinator, at 928–856–1146 or email at *Bryce.Esch@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the

Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the committee is to provide advice and recommendations to the Secretary on the selection of collaborative forest landscape restoration proposals as provided in Section 8629 of the Agriculture Improvement Act of 2018. The meetings are open to the public. The agendas will include time for people to make oral statements of three minutes or less.

Written comments may be submitted as described under the **DATES** section. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

The meeting agendas will include:

1. Evaluate 2023 Collaborative Forest Landscape Restoration Program (CFLRP) proposals and provide recommendations to the Secretary of Agriculture on proposal selection for funding; and

2. Development of CFLRP future process recommendations.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: March 15, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–05700 Filed 3–20–23; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual briefing via Zoom at 1:00 p.m. MT on Thursday, May 4, 2023. The purpose of the meeting is to hear testimony regarding housing discrimination in the state.

DATES: The briefing will take place on Thursday, May 4, 2023, from 1:00 p.m.–3:30 p.m. MT.

ADDRESSES:

Registration Link (Audio/Visual): https://www.zoomgov.com/j/1606028852

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 602 8852

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email *kfajota@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Wyoming Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Opening Remarks
III. Panelist Presentations & Committee Q&A
IV. Public Comment
V. Closing Remarks
VI. Adjournment

Dated: March 16, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–05749 Filed 3–20–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Privacy Act of 1974; System of Records

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the United States Commission on Civil Rights (Commission) proposes to establish a new system of records titled, ''CCR/Internal—Advisory Committee Records.'' This system of records will include information that the Commission collects and maintains on applicants to advisory committees.

DATES: Submit comments on or before April 20, 2023. This new system is effective upon publication in the **Federal Register**, except for the routine uses, which are effective April 25, 2023.

ADDRESSES: You may submit written comments to *publicaffairs@usccr.gov* and/or *sccozart@usccr.gov.* All

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

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: David Ganz, General Counsel, United States Commission on Civil Rights at *dganz@usccr.gov* or Tina Louise Martin, Director, Office of Management, U.S. Commission on Civil Rights at *tmartin@usccr.gov*. Please put ''CCR/Internal State Advisory Committee Records SORN'' in the subject line of your email.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Commission proposes to establish a new system of records titled, ''CCR/Internal—State Advisory Committee Records.'' This system of records covers the Commission's collection and maintenance of records on applicants for Advisory Committees.

The USCCR's Advisory Committees were created to hold briefings with expert/public testimony and produce reports and advisory memoranda, which are then sent to the Commission. The Commission was established by the Civil Rights Act of 1957, Public Law 815–315, and subsequently codified in the Civil Rights Commission Amendments Act of 1994, Public Law 103–419. The Commission, including its 56 Advisory Committees for all 50 states, the District of Columbia, and five U.S. territories, publishes reports following investigations; the Commission's reports include findings and recommendations to inform the President, Congress, and the public on important civil rights issues.

The USCCR identifies candidates for Advisory Committee membership through a variety of methods, including, but not limited to, public requests for nominations; recommendations from existing advisory committee members; consultations with knowledgeable persons outside the USSCR; requests to be represented received from individuals and organizations; and Commissioners' and USCCR staff's professional knowledge of those experienced in civil rights issues. Following the application and identification process, the USCCR develops a list of proposed members with the relevant points of view needed to ensure membership balance. The Commissioners then votes to appoint individuals to serve.

The collection of information is necessary to support the USCCR Advisory Committees. Pursuant to the Federal Advisory Committee Act (FACA), an agency must ensure that a committee is balanced with respect to the viewpoints represented and the functions to be performed by that committee. Consistent with this, in order to select individuals for potential membership on an advisory committee, the USCCR must determine that potential members are qualified to serve on an advisory committee and that the viewpoints are properly balanced on the committee.

The Commission has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016. This system will be included in the Commission's inventory of record systems.

U.S. Commission on Civil Rights.

David Ganz,

General Counsel.

SYSTEM NAME AND NUMBER:

United States Commission on Civil Rights, CCR/Internal—State Advisory Committee Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained primarily by the U.S. Commission on Civil Rights, Office of Management located at Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425. Records may be located in locked cabinets and offices, on the Commission's local area network, or in designated U.S. data centers for FedRAMP-authorized cloud service providers.

SYSTEM MANAGER(S):

Director of Management, U.S. Commission on Civil Rights, Pennsylvania Ave. NW, Suite 1150 Washington, DC 20425, *tmartin@usccr.gov*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Civil Rights Act of 1957, Public Law 815–315, and subsequently modified in the Civil Rights Commission Amendments Act of 1994, 42 U.S.C. 1975a; 45 CFR part 703 (Operations and Functions of State Advisory Committees); Federal Advisory Committee Act (FACA), Public Law 92–463 codified as 5 U.S.C. App. 2; 41 CFR part 102–3 (Federal Advisory Committee Management Regulations.)

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to allow the Commission to collect and maintain records on applicants to State Advisory Committees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants to State and Territory Advisory Committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

☐ Applicant's name and address;
☐ Applicant's contact information;
☐ Applicant's experience in civil rights;
☐ Applicant's resume, prior education and professional experience;
☐ Applicant's personal information that was voluntarily submitted as part of their Advisory Committee application, which may include, political and ideological identification, race/ethnicity, national origin, gender, sexual orientation, languages spoken, disability status, age, religion, and veteran status and, if, any, journal publications or social media handles;

RECORD SOURCE CATEGORIES:

Information is obtained from the individuals who submit their application to the State and Territory Advisory Committee.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice, including Offices of the U.S. Attorneys; another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party in litigation before a court, adjudicative, or administrative body; or to a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant or necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:

(1) The Commission, or any component thereof;

(2) Any employee or former employee of the Commission in his or her official capacity;

(3) Any employee or former employee of the Commission in his or her capacity where the Department of Justice or the Commission has agreed to represent the employee;

(4) The United States, a Federal agency, or another party in litigation before a court, adjudicative, or administrative body, upon the Commission's General Counsel's approval, pursuant to 5 CFR part 295 or otherwise.

b. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates or is relevant to a violation or potential violation of civil or criminal law or regulation.

c. To a member of Congress from the record of an individual in response to an inquiry made at the request of the individual to whom the record pertains.

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

e. To appropriate agencies, entities, and persons when (1) the Commission suspects or has confirmed that there has been a breach of the system of records; (2) the Commission has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

f. To another Federal agency or Federal entity, when the Commission determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

g. To contractors, grantees, experts, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Commission when the Commission determines that it is necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Commission employees.

h. To another Federal agency or commission with responsibility for labor or employment relations or other issues, including equal employment opportunity and reasonable accommodation issues, when that agency or commission has jurisdiction over reasonable accommodation.

i. To an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator, or other duly authorized official engages in investigation or settlement of a grievance, complaint, or appeal filed by an individual who requested a reasonable accommodation or other appropriate modification.

j. To another Federal agency, including but not limited to the Equal Employment Opportunity Commission and the Office of Special Counsel to obtain advice regarding statutory, regulatory, policy, and other requirements related to reasonable accommodation.

k. To another Federal agency or entity authorized to procure assistive technologies and services in response to a request for reasonable accommodation.

l. To first aid and safety personnel if the individual's medical condition requires emergency treatment.

m. To another Federal agency or oversight body charged with evaluating the Commission's compliance with the laws, regulations, and policies governing reasonable accommodation requests.

n. To another Federal agency pursuant to a written agreement with the Commission to provide services (such as medical evaluations), when necessary, in support of reasonable accommodation decisions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The records in this system of records are stored electronically on the Commission's local area network or with FedRAMP-authorized cloud service providers segregated from non-government traffic and data, with access limited to a small number of personnel. In addition, paper records are stored in locked file cabinets in access-restricted offices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name or other unique personal identifiers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system of records are maintained in accordance with the General Records Schedule 2.3 and are destroyed three years after separation from the agency or all appeals are concluded, whichever is later, but longer retention is authorized if requested for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in the system are protected from unauthorized access and misuse through various administrative, technical, and physical security measures. Commission security measures are in compliance with the Federal Information Security Modernization Act (Pub. L. 113–283), associated Commission policies, and applicable standards and guidance from the National Institute of Standards and Technology. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Access to the paper and electronic records in this system of records is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORDS ACCESS PROCEDURES:

Individuals seeking notification of and access to their records in this system of records may submit a request in person or in writing to the Office of the General Counsel, United States, Commission on Civil Rights 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425 or by emailing *dganz@usccr.gov*. The words ''*Privacy Act Request*'' should be placed in on the face of the envelope in order to facilitate requests by mail. Individuals must furnish the following information for their records to be located:

1. Full name;

2. Reasonably specific description of the information sought including the nature of the records sought and, if possible, the approximate dates covered by the record; and,

3. If the request is made by mail, the address to which the information should be sent.

The individual requesting access to the records must also comply with the Commission's regulations regarding verification of identity (45 CFR 705.4).

CORRECTING OR AMENDING RECORD PROCEDURES:

Individuals wishing to request amendment of records about them contained in this system of records may do so by writing to the General Counsel, United State Commission on Civil Rights 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425 or by emailing *dganz@usccr.gov.* Requests for amendment of records should include the following information for their records to be located:

1. The name of the *individual* requesting the correction or amendment.
2. The name of the system of *records* in which the *record* sought to be amended is maintained.
3. The location of the *record* system from which the *record* was obtained.
4. A copy of the *record* sought to be amended or a description of that *record.*
5. A statement of the material in the *record* that should be corrected or amended.
6. A statement of the specific wording of the correction or amendment sought.
7. A statement of the basis for the requested correction or amendment, including any material that the *individual* can furnish to substantiate the reasons for the amendment sought.

NOTIFICATION PROCEDURES:

See ''Record Access Procedure.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2023–05709 Filed 3–20–23; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Federal Economic Statistics Advisory Committee Meeting

AGENCY: Bureau of Economic Analysis, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Economic Analysis (BEA) is giving notice of a meeting of the Federal Economic Statistics Advisory Committee (FESAC or the Committee). The Committee advises the Under Secretary for Economic Affairs, the Directors of the Bureau of Economic Analysis and the Census Bureau, and the Commissioner of the U.S. Department of Labor's Bureau of Labor Statistics (BLS) on statistical methodology and other technical matters related to the collection, tabulation, and analysis of Federal economic statistics. An agenda will be accessible prior to the meeting at *https://apps.bea.gov/fesac/.*

DATES: June 9, 2023. The meeting begins at 10 a.m. and adjourns at 3:30 p.m. (ET).

ADDRESSES: This meeting will be a hybrid event. Committee members and presenters will have the option to join the meeting in person or via video conference technology. All outside attendees will be invited to attend via video conference technology only. The meeting is open to the public via video conference technology. Contact Gianna Marrone at (301) 278–9282 or *gianna.marrone@bea.gov* by June 2, 2023, to RSVP. The Advisory Committee website will maintain the most current information on the meeting agenda, schedule, and location. These items may be updated without further notice in the **Federal Register**. Information about how to access the meeting and presentations will be posted 24 hours prior to the meeting on *https://apps.bea.gov/fesac/.*

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, 4600 Silver Hill Road (BE–64), Suitland, MD 20746; phone (301) 278–9282; email *gianna.marrone@bea.gov.*

SUPPLEMENTARY INFORMATION: FESAC members are appointed by the Secretary of Commerce. The Committee advises the Under Secretary for Economic Affairs, BEA and Census Bureau Directors, and the Commissioner of the Department of Labor's BLS on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. The Committee is established in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2).

The Committee aims to have a balanced representation among its members, considering such factors as geography, age, sex, race, ethnicity, technical expertise, community involvement, and knowledge of programs and/or activities related to FESAC. Individual members are selected based on their expertise in or representation of specific areas as needed by FESAC.

This meeting is open to the public. The meeting is accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at *gianna.marrone@bea.gov* by June 2, 2023. Persons with extensive questions or statements must submit them in writing by June 2, 2023, to Gianna Marrone, *gianna.marrone@bea.gov.*

Authority: Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., app.

Dated: March 6, 2023.

Sabrina Montes,

Designated Federal Officer, Bureau of Economic Analysis.

[FR Doc. 2023–05741 Filed 3–20–23; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Bureau of Economic Analysis Advisory Committee Meeting

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Bureau of Economic Analysis (BEA) announces a meeting of the Bureau of Economic Analysis Advisory Committee (BEAAC or the Committee). The meeting will address proposed improvements, extensions, and research related to BEA's economic accounts. In addition, the meeting will include an update on recent statistical developments.

DATES: May 12, 2023. The meeting begins at 10:00 a.m. and adjourns at 2:30 p.m. (ET).

ADDRESSES: This meeting will be a hybrid event. Committee members and presenters will have the option to join the meeting in person or via video conference technology. All outside attendees will be invited to attend via video conference technology only. The meeting is open to the public via video conference technology. Contact Gianna Marrone at (301) 278–9282 or *gianna.marrone@bea.gov* by May 5, 2023, to RSVP. The call-in number, access code, and presentation link will be posted 24 hours prior to the meeting on *https://www.bea.gov/about/bea-advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, Suitland, MD 20746; phone (301) 278–9282; email *gianna.marrone@bea.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999, in accordance with the Federal Advisory Committee Act (5 U.S.C. app. section 2). The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and

international economic accounts, with a focus on new and rapidly growing areas of the U.S. economy. The Committee provides recommendations from the perspectives of the economics profession, business, and government.

The Committee aims to have a balanced representation among its members, considering such factors as geography, age, sex, race, ethnicity, technical expertise, community involvement, and knowledge of programs and/or activities related to BEAAC. Individual members are selected based on their expertise in or representation of specific areas as needed by BEAAC.

This meeting is open to the public. The meeting is accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at (301) 278–9282 or *gianna.marrone@bea.gov* by May 5, 2023. Persons with extensive questions or statements must submit them in writing by May 5, 2023, to Gianna Marrone, *gianna.marrone@bea.gov.* Persons with extensive questions or statements must submit them in writing by May 5, 2023, to Gianna Marrone, *gianna.marrone@bea.gov.*

Authority: Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App.

Dated: March 6, 2023.

Ryan Noonan,

Designated Federal Officer, Bureau of Economic Analysis.

[FR Doc. 2023–05738 Filed 3–20–23; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Expenditures Incurred by Recipients of Biomedical Research and Development Awards From the National Institutes of Health (NIH)

AGENCY: Bureau of Economic Analysis (BEA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us access the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 22, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Jennifer A. Bennett, Chief, Durable Goods and Equipment Section, Industry Economics Division, Bureau of Economic Analysis, 4600 Silver Hill Road, BE–61, Washington DC 20233, or by email to *brdpi@bea.gov* or *PRAcomments@doc.gov.* Please reference OMB Control Number 0608–0069 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Jennifer A. Bennett, Chief, Durable Goods and Equipment Section, Industry Economics Division (BE–61), Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; (301–278–9769); or via email at *brdpi@bea.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The survey obtains the distribution of expenditures incurred by recipients of biomedical research awards from NIH and will provide information on how the NIH award amounts are expended across several major categories. This information, along with wage and price data from other published sources, will be used to generate the Biomedical Research and Development Price Index (BRDPI). The BRDPI is an index of prices paid for the labor, supplies, equipment, and other inputs required to perform the biomedical research the NIH supports in its intramural laboratories and through its awards to extramural organizations. The BRDPI is a vital tool for planning the NIH research budget and analyzing future NIH programs. A survey of award recipients is currently the only means for updating the expenditure category weights that are used to prepare the BRDPI. BEA develops the index for NIH under a reimbursable interagency agreement.

This survey will be voluntary. The authority for NIH to collect information for the BRDPI is provided in 45 CFR 75.302 and 75.308. These sections set forth explicit standards for grantees in establishing and maintaining financial management systems and records. Additional authority exists under 45 CFR 75.361 and 75.364, which provide for the retention of such records as well as NIH access to such records.

BEA will administer the survey and analyze the survey results on behalf of NIH, through a reimbursable interagency agreement between the two agencies. The authority for the NIH to reimburse BEA for this collection is the Economy Act (31 U.S.C. 1535).

BEA possesses programmatic authority to conduct this collection under 15 U.S.C. 1525 (first paragraph). NIH's support for this research is consistent with its duties and authority under 42 U.S.C. 282.

The information provided by the respondents will be held confidential and be used for exclusively statistical purposes. This pledge of confidentiality is made under the Confidential Information Protection and Statistical Efficiency Act of 2018 (CIPSEA) (44 U.S.C. 3572). This section provides that ''data or information acquired by an agency under a pledge of confidentiality and for exclusively statistical purposes shall be used by officers, employees, or agents of the agency exclusively for statistical purposes. Data or information acquired by an agency under a pledge of confidentiality for exclusively statistical purposes shall not be disclosed by an agency in identifiable form, for any use other than an exclusively statistical purpose, except with the informed consent of the respondent.''

Responses will be kept confidential and will not be disclosed in identifiable form to anyone, other than employees or agents of BEA or agents of NIH, without prior written permission of the person filing the report. By law, each employee as well as each agent is subject to a jail term of up to 5 years, a fine of up to $250,000, or both for disclosing to the public any identifiable information that is reported about a business or institution.

Section 515 of the Treasury and General Government Appropriations Act for FY2001 (Pub. L. 106–554) (the Information Quality Guidelines) applies to this survey. The collection and use of this information comply with all applicable information quality guidelines, *i.e.,* those of the Office of Management and Budget (OMB), DOC, BEA, and NIH.

II. Method of Collection

A survey with a cover letter that includes a brief description of, and rationale for, the survey will be sent by email to potential respondents by the first week of August 2023, 2024, and

2025. A report of the respondent's expenditures of the NIH award amounts (including NIH awards received as a sub-recipient from another institution and following the proposed format for expenditure categories included with the survey form) will be requested to be completed and submitted online no later than December 8 of each survey year, which in most years will be approximately 120 days after mailing. Survey respondents will be selected based on award levels, which determine the weight of the respondent in the BRDPI. Potential respondents will include (1) The top 100 organizations in total awards, which account for about 76 percent of total awards; (2) 40 additional organizations that are not primarily in the ''Research and Development (R&D) contracts'' category; and (3) 10 additional organizations that are primarily in the ''R&D contracts'' category.

III. Data

OMB Control Number: 0608–0069.

Form Number: None.

Type of Review: Regular submission, extension of current information collection.

Affected Public: Universities or other organizations that are NIH award recipients.

Estimated Number of Respondents: 150.

Estimated Time per Response: 16 hours but may vary among respondents because of differences in institution structure, size, and complexity.

Estimated Total Annual Burden Hours: 2,400 hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary

Legal Authority: 45 CFR 75.302, 75.308, 75.361, and 75.364; 15 U.S.C. 1525; 42 U.S.C. 282.

IV. Request for Comments

We are soliciting comments to permit BEA to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the NIH, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.

[FR Doc. 2023–05771 Filed 3–20–23; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC800]

Atlantic Highly Migratory Species; Atlantic Shark Fishery Review

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of the final Atlantic shark fishery review (SHARE) document.

SUMMARY: NMFS announces the availability of the final SHARE document. As part of the overall review of the current state of the Atlantic shark fishery, NMFS examined various aspects of commercial and recreational shark fisheries conservation and management, shark depredation, and additional factors affecting the shark fishery. As a comprehensive review of the shark fishery, the SHARE document identifies areas of success and concerns in the fishery and identifies potential future revisions to regulations and management measures. NMFS anticipates that any such revisions to the regulations and/or management measures would occur via future rulemaking, as applicable, and would include appropriate opportunity for public comment.

DATES: The SHARE document was finalized on March 14, 2023.

ADDRESSES: Electronic copies of this document may be obtained on the internet at: *https://www.fisheries.noaa.gov/action/atlantic-shark-fishery-review-share.*

FOR FURTHER INFORMATION CONTACT: Guy DuBeck (*Guy.DuBeck@noaa.gov*) or Karyl Brewster-Geisz (*Karyl.Brewster-Geisz@noaa.gov*) by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic Highly Migratory Species (HMS) fisheries (tunas, billfish, swordfish, and sharks) are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (2006 Consolidated HMS FMP) and its amendments are implemented by regulations at 50 CFR part 635.

Under the Magnuson-Stevens Act, NMFS is responsible for the sustainable management of Atlantic HMS (16 U.S.C. 1852(a)(3)). NMFS must comply with all applicable provisions of the Magnuson-Stevens Act when implementing conservation and management measures for shark stocks and fisheries. Under the Magnuson-Stevens Act, conservation and management measures must prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery (16 U.S.C. 1851(a)(1)). Where a fishery is determined to be in or approaching an overfished condition, NMFS must adopt conservation and management measures to prevent or end overfishing and rebuild the fishery (16 U.S.C. 1853(a)(10); 1854(e)). In addition, NMFS must, among other things, comply with the Magnuson-Stevens Act's 10 National Standards, including a requirement to use the best scientific information available as well as to consider potential impacts on residents of different States, efficiency, costs, fishing communities, bycatch, and safety at sea (16 U.S.C. 1851 (a)(1–10)). Additionally, under the Atlantic Tunas Convention Act, NMFS must implement binding domestic regulations and other measures necessary and appropriate to carry out applicable recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), which has issued recommendations for the conservation and management of shark species caught in association with ICCAT fisheries. NMFS also must implement domestic measures to carry out proposals adopted under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which has included measures that place requirements or restrictions on the trade of some shark species and shark fins. The purpose of the SHARE document is to analyze trends within the commercial and

recreational shark fisheries to identify main areas of success and concerns with conservation and management measures and find potential ways to improve management of the shark fishery.

Atlantic shark fisheries have been federally managed since 1993. Unlike stock assessments, which focus on abundance of stocks and their status, SHARE focuses on the overall state of these fisheries to assist in determining potential next steps for management. In the document, NMFS refers to ''the Atlantic shark fishery'' to collectively encompass all of the commercial and recreational fisheries and gear types managed by NMFS HMS Management Division. NMFS began this review after noticing concerning trends in the fishery. In the commercial fishery, trends include reduced landings, a decrease in active vessels, and an increase in shark discards. In the recreational fishery, trends include an increase in catch and release rates, an increase in effort by state-water or shore-based fishermen, increased numbers of shark depredation events, and a decrease in targeted pelagic shark trips. Through the SHARE process, NMFS explored various aspects of the Atlantic shark fisheries to improve stability and resiliency within the fisheries and address the following objectives:

- Review the current state of the Atlantic shark fishery;
- Identify areas of success in the fishery;
- Identify areas of concern in the fishery; and
- Identify potential ways to improve the fishery and potential future shark management actions or measures.

NMFS published a Notice of Availability of the draft SHARE document on October 25, 2021 (86 FR 58891). A public webinar was conducted on December 8, 2021, and the public comment period closed on January 3, 2022. NMFS received 47 written comments and a variety of verbal comments regarding the draft SHARE document. A summary of public comments received is included in the Appendix of the final SHARE document which may be accessed at *https://www.fisheries.noaa.gov/action/atlantic-shark-fishery-review-share.*

After consideration of public comments, NMFS has finalized the SHARE document. Based on findings outlined in the document, NMFS believes changes to shark fishery management are warranted to improve its overall performance and the health of shark stocks.

As part of SHARE, NMFS reviewed information regarding commercial shark fishery vessel permits, trips targeting or retaining sharks, shark landings, dealer permits, and markets. These data indicate that catch of available quota and participation in the commercial shark fishery have dramatically declined from historical levels. In addition, NMFS anticipates further declines in the future, due to the adoption, in November 2022, of a proposal under CITES to list many shark species in CITES Appendix II. In the recreational shark fishery, NOAA Fisheries reviewed the number of recent permits with shark endorsements, fishing effort, survey data, and tournament landings. These data indicate increased shark fishing effort by state-water and shore-based fishermen, along with increased numbers of sharks being caught and released. Directed trips targeting pelagic sharks and tournament landings have declined since shortfin mako shark size limits were implemented, and are likely to decline further due to the current zero retention limit for shortfin mako sharks. Additionally, shark depredation, which occurs when a shark eats or preys upon fish that are caught on fishing gear, has been a growing concern in a wide variety of commercial and recreational fisheries. While the number of reports of depredation have increased, the underlying cause of the increase is uncertain—it could be due to an increase in the number of sharks as stocks rebuild; a learned behavior by sharks as they recognize motors, fishing techniques, or shark feeding locations as a source of food; an increase in the number of people using social media to report the depredation; or any combination of the above. Lastly, in the SHARE document, NMFS analyzed factors beyond the Federal shark fishery, including other fisheries, Federal and state shark fin sale prohibitions, and binding international recommendations.

Overall, this review has found that NMFS is sustainably managing shark stocks; however, catch and participation in the commercial shark fishery is in decline in terms of the extent of available quota use and the number of participants. This decline is happening despite fishermen having available quotas for many species, and, in most regions, an open season year-round. The review has also identified a need in the recreational fishery to improve species identification, which could improve shark fishery data, thus improving management overall. Additionally, it is likely that other fisheries, state shark fin sale prohibitions, and binding international recommendations directly and indirectly affected fishing effort and landings from 2014 through 2019. Recently enacted Federal shark fin sale prohibitions also are likely to have further impacts on the shark fishery, though the impacts of those prohibitions are unknown at this time. Possible changes that could increase the productivity of the commercial shark fishery while remaining consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments could include modifications to:

- Vessel permit structure, including shifting incidental permits to open-access permits;
- Commercial vessel retention limits for large coastal sharks, blacknose, and other shark management groups;
- Authorized gear types, by including additional gear types to retain sharks in the commercial fishery;
- Regional and sub-regional quotas, to better match regional expectations and opportunities;
- Recreational size and bag limits; and,
- Reporting mechanisms, to improve data collection of recreational shark species and shark depredation events.

NMFS anticipates that management revisions such as those above would occur via future rulemaking to modify HMS regulations, as applicable, with appropriate opportunity for public comment. Making any such changes would take time, but regardless of timing, NMFS believes changes to the shark fishery are warranted to improve the overall health of the fishery and shark stocks.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 15, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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BUREAU OF CONSUMER FINANCIAL PROTECTION

Supervisory Highlights Junk Fees Special Edition, Issue 29, Winter 2023

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supervisory Highlights.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is issuing its twenty-nineth edition of Supervisory Highlights.

DATES: The Bureau released this edition of the Supervisory Highlights on its website on March 8, 2023. The findings in this report cover examinations

involving fees in the areas of deposits, auto servicing, mortgage servicing, payday and small dollar lending, and student loan servicing completed between July 1, 2022, and February 1, 2023.

FOR FURTHER INFORMATION CONTACT: Jaclyn Sellers, Senior Counsel, at (202) 435–7449. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

1. Introduction

This special edition of *Supervisory Highlights* focuses on the Bureau's recent supervisory work related to violations of law in connection with fees.[1] As part of its emphasis on fair competition the CFPB has launched an initiative, consistent with its legal authority, to scrutinize exploitative fees charged by banks and financial companies, commonly referred to as ''junk fees.''

Junk fees are unnecessary charges that inflate costs while adding little to no value to the consumer. Theses unavoidable or surprise charges are often hidden or disclosed only at a later stage in the consumer's purchasing process or sometimes not at all.

The CFPB administers several laws and regulations that may touch on fees including, but not limited to, the Credit Card, Accountability, Responsibility and Disclosure Act of 2009 (CARD Act),[2] the Fair Debt Collection Practices Act (FDCPA),[3] Regulation Z,[4] and the prohibition against unfair, deceptive, or abusive acts or practices (UDAAP) under the Consumer Financial Protection Act of 2010 (CFPA).[5]

The findings in this report cover examinations involving fees in the areas of deposits, auto servicing, mortgage servicing, payday and small dollar lending, and student loan servicing completed between July 1, 2022, and February 1, 2023. To maintain the anonymity of the supervised institutions discussed in *Supervisory Highlights,* references to institutions generally are in the plural and the related findings may pertain to one or more institutions.

We invite readers with questions or comments about *Supervisory Highlights* to contact us at *CFPB_Supervision@cfpb.gov.*

[1] If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

[2] 12 CFR 1026.

[3] 15 U.S.C. 1692.

[4] 12 CFR 1026.

[5] 12 U.S.C. 5531, 5536.

2. Supervisory Observations

2.1 Deposits

During examinations of insured depository institutions and credit unions, Bureau examiners assessed activities related to the imposition of certain fees by the institutions. This included assessing whether entities had engaged in any UDAAPs prohibited by the CFPA.[6]

2.1.1 Unfair Authorize Positive, Settle Negative Overdraft Fees

As described below, Supervision has cited institutions for unfair unanticipated overdraft fees for transactions that authorized against a positive balance, but settled against a negative balance (*i.e.,* APSN overdraft fees). They can occur when financial institutions assess overdraft fees for debit card or ATM transactions where the consumer had a sufficient available balance at the time the financial institution authorized the transaction, but given the delay between authorization and settlement of the transaction the consumer's account balance is insufficient at the time of settlement. This can occur due to intervening authorizations resulting in holds, settlement of other transactions, timing of presentment of the transaction for settlement, and other complex processes relating to transaction order processing practices and other financial institution policies. The Bureau previously discussed this practice in Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices (Overdraft Circular).[7]

Supervision has cited unfair acts or practices at institutions that charged consumers APSN overdraft fees. An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.[8]

While work is ongoing, at this early stage, Supervision has already identified at least tens of millions of dollars of consumer injury and in response to these examination findings, institutions are providing redress to over 170,000 consumers. Supervision found instances in which institutions assessed unfair APSN overdraft fees using the consumer's available balance for fee decisioning, as well as unfair APSN overdraft fees using the consumer's ledger balance for fee decisioning. Consumers could not reasonably avoid the substantial injury, irrespective of account-opening disclosures. As a result of examiner findings, the institutions were directed to cease charging APSN overdraft fees and to conduct lookbacks and issue remediation to consumers who were assessed these fees.

Supervision also issued matters requiring attention to correct problems that occurred when institutions had enacted policies intended to eliminate APSN overdraft fees, but APSN fees were still charged. Specifically, institutions attempted to prevent APSN overdraft fees by not assessing overdraft fees on transactions which authorized positive, as long as the initial authorization hold was still in effect at or shortly before the time of settlement. There were some transactions, however, that settled outside this time period. Examiners found evidence of inadequate compliance management systems where institutions failed to maintain records of transactions sufficient to ensure overdraft fees would not be assessed, or failed to use some other solution to not charge APSN overdraft fees. In response to these findings, the institutions agreed to implement more effective solutions to avoid charging APSN overdraft fees and to issue remediation to the affected consumers.

The Bureau has stated the legal violations surrounding APSN overdraft fees both generally and in the context of specific public enforcement actions will result in hundreds of millions of dollars of redress to consumers.[9] As discussed in a June 16, 2022 blog post, Supervision has also engaged in a pilot program to collect detailed information about institutions' overdraft practices, including whether institutions charged APSN overdraft fees.[10] A number of

[6] 12 U.S.C. 5531, 5536.

[7] Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices (Oct. 26, 2022) (Overdraft Circular) at 8–12, available at: *https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf.*

[8] 12 U.S.C. 5531(c).

[9] *See* Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices (Oct. 26, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf;* CFPB Consent Order 2022–CFPB–008, In the Matter of Regions Bank (Sept. 28, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_Regions_Bank-_Consent-Order_2022-09.pdf;* CFPB Consent Order 2022–CFPB–0011, In the Matter of Wells Fargo Bank (Dec. 20, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-na-2022_consent-order_2022-12.pdf.*

[10] Measuring the impact of financial institution overdraft programs on consumers (June 16, 2022), available at: *https://www.consumerfinance.gov/about-us/blog/measuring-the-impact-of-financial-institution-overdraft-programs-on-consumers/.*

banks that had previously reported to Supervision engaging in APSN overdraft fee practices now report that they will stop doing so. Institutions that have reported finalized remediation plans to Supervision state their plans cover time periods starting in 2018 or 2019 up to the point they ceased charging APSN overdraft fees.

2.1.2 Assessing Multiple NSF Fees for the Same Transaction

Supervision conducted examinations of institutions to review certain practices related to charging consumers non-sufficient funds (NSF) fees. As described in more detail below, examiners conducted a fact-intensive analysis at various institutions to assess specific types of NSF fees. In some of these examinations, examiners found unfair practices related to the assessment of multiple NSF fees for a single transaction.

Some institutions assess NSF fees when a consumer pays for a transaction with a check or an Automated Clearing House (ACH) transfer and the transaction is presented for payment, but there is not a sufficient balance in the consumer's account to cover the transaction. After declining to pay a transaction, the consumer's account-holding institution will return the transaction to the payee's depository institution due to non-sufficient funds and may assess an NSF fee. The payee may then present the same transaction to the consumer's account-holding institution again for payment. If the consumer's account balance is again insufficient to pay for the transaction, then the consumer's account-holding institution may assess another NSF fee for the transaction and again return the transaction to the payee. Absent restrictions on assessment of NSF fees by the consumer's account-holding institution, this cycle can occur multiple times.

Supervision found that institutions engaged in unfair acts or practices by charging consumers multiple NSF fees when the same transaction was presented multiple times for payment against an insufficient balance in the consumer's accounts, potentially as soon as the next day. The assessment of multiple NSF fees for the same transaction caused substantial monetary harm to consumers, totaling millions of dollars. These injuries were not reasonably avoidable by consumers, regardless of account opening disclosures. And the injuries were not outweighed by countervailing benefits to consumers or competition.

Examiners found that institutions charged several million dollars to tens of thousands of consumers over the course of several years due to their assessment of multiple NSF fees for the same transaction. The institutions agreed to cease charging NSF fees for unpaid transactions entirely and Supervision directed the institutions to refund consumers appropriately. Other regulators have spoken about this practice as well.[11]

In the course of obtaining information about institutions' overdraft and NSF fee practices, examiners obtained information regarding limitations related to the assessment of NSF fees. Supervision subsequently heard from a number of institutions regarding changes to their NSF fee assessment practices. Virtually all institutions that Supervision has engaged with on this issue reported plans to stop charging NSF fees altogether.

Supervision anticipates engaging in further follow-up work on both multiple NSF fee and APSN overdraft fee issues. In line with the Bureau's statement regarding responsible business conduct, institutions are encouraged to ''self-assess [their] compliance with Federal consumer financial law, self-report to the Bureau when [they identify] likely violations, remediate the harm resulting from these likely violations, and cooperate above and beyond what is required by law'' with these efforts.[12] As the statement notes, ''. . . the Bureau's Division of Supervision, Enforcement, and Fair Lending makes determinations of whether violations should be resolved through non-public supervisory action or a possible public enforcement action through its Action Review Committee (ARC) process.'' For those institutions that meaningfully engage in responsible conduct, this ''could result in resolving violations non-publicly through the supervisory process.''

2.2 Auto Servicing

During auto servicing examinations, examiners identified UDAAPs related to junk fees, such as unauthorized late fees and estimated repossession fees.[13] Additionally, examiners found that servicers charged unfair and abusive payment fees.

2.2.1 Overcharging Late Fees

Examiners found that servicers engaged in unfair acts or practices by assessing late fees in excess of the amounts allowed by consumers' contracts. Auto contracts often contain language that caps the maximum late fee amounts servicers are permitted to assess. The servicers coded their systems to assess a $25 late fee even though some consumers' loan notes capped late fees at no more than 5% of the monthly payment amount. The $25 late fee exceeded 5% of many consumers' monthly payment amounts. Excessive late fees cost consumers money and thus constitute substantial injury. Consumers could not reasonably avoid the injury because they do not control how servicers calculate late fees, had no reason to anticipate that the servicers would impose excessive late fees, and could not practically avoid being charged a fee. And the injury to consumers was not outweighed by benefits to consumers or competition.

In response to these findings, the servicers ceased the practice and refunded late fee overcharges to consumers.

2.2.2 Charging Unauthorized Late Fees After Repossession and Acceleration

Examiners found that servicers engaged in unfair acts or practices by assessing late fees not allowed by consumers' contracts. Specifically, the contracts authorized the servicers to charge late fees if consumers' periodic payments were more than 10 days delinquent. But, under the terms of the relevant loan agreements, after the servicers accelerated the loan balance, the entire remaining loan balance became immediately due and payable, thus terminating consumers' contractual obligation to make further periodic payments and eliminating the servicers' contractual right to charge late fees on such periodic payments. Despite this, the servicers continued to collect late fees even after they repossessed the vehicles on periodic payments scheduled to occur subsequent to the date on which the loan balances were accelerated. When consumers redeemed their vehicles by paying the full balance, they also paid these unauthorized late fees; these unauthorized fees caused substantial injury to consumers. Consumers could not reasonably avoid the late fees because they had no control

[11] NYDFS, Industry Letter: Avoiding Improper Practices Related to Overdraft and Non-Sufficient Funds Fees (July 12, 2022), available at: *https://www.dfs.ny.gov/industry_guidance/industry_letters/il20220712_overdraft_nsf_fees;* FDIC, Supervisory Guidance on Multiple Re-Presentment NSF Fees (Aug. 2022), available at: *https://www.fdic.gov/news/financial-institution-letters/2022/fil22040a.pdf.*

[12] CFPB Bulletin 2020–01, Responsible Business Conduct: Self-Assessing, Self-Reporting, Remediating, and Cooperating (Mar. 6, 2020), available at: *https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2020-01_responsible-business-conduct.pdf.*

[13] Note that while involuntary fees are often unfair when they are not authorized by a consumer contract, fees that are disclosed in the contract can also be unfair, depending on the circumstances.

over the servicers' late fee practices. And the injury to consumers was not outweighed by benefits to consumers or competition.

In response to these findings, servicers ceased the practice and refunded late fees to consumers.

2.2.3 Charging Estimated Repossession Fees Significantly Higher Than Average Repossession Costs

Examiners found that, where servicers allowed consumers to recover their vehicles after repossession by paying off the loan balance or past due amounts, servicers charged a $1,000 estimated repossession fee as part of the amount owed. This estimated repossession fee was significantly higher than the average repossession cost, which is generally around $350. By policy, the servicers returned the excess amounts to the consumer after they received the invoice for the actual cost from the repossession agent.

Examiners found that the servicers engaged in unfair acts or practices when they charged estimated repossession fees that were significantly higher than the costs they purported to cover. The relevant contracts permitted the servicers to charge consumers default-related fees based on actual cost, but here the fees significantly exceeded the actual cost. Charging the fees caused or was likely to cause substantial injury in the form of concrete monetary harm. For consumers who paid the amount demanded, deprivation of these funds for even a short period constituted substantial injury. Furthermore, some consumers may have been dissuaded from recovering their vehicles because the servicers represented that consumers must pay a $1,000 estimated repossession fee in addition to other amounts due. Some consumers may have been able to afford a $350 fee but not a $1,000 fee, and therefore did not pay and permanently lost access to their vehicles. Consumers could not reasonably avoid the injury because they did not control the servicers' practice of charging unauthorized estimated repossession fees. And the injury was not outweighed by countervailing benefits to consumers or competition because the fee exceeded costs necessary to cover repossession.

In response to these findings, the servicers ceased the practice of charging estimated repossession fees that were significantly higher than the actual average amount and provided refunds to affected consumers.

2.2.4 Unfair and Abusive Payment Fees

An act or practice is abusive if it ''takes unreasonable advantage of . . . the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service.'' [14]

Examiners found that servicers engaged in unfair and abusive acts or practices by charging and profiting from payment processing fees that far exceeded the servicers' costs for processing payments, after the consumer was locked into a relationship with a servicer chosen by the dealer. Examiners observed that the servicers only offered two free payment options—pre-authorized recurring ACH and mailed checks—which are only available to consumers with bank accounts. Approximately 90 percent of payments made by consumers incurred a pay-to-pay fee. The servicers received over half the amount of these fees from the servicers' third-party payment processor as incentive payments, totaling millions of dollars.

Examiners concluded that these practices took unreasonable advantage of consumers' inability to protect their interests by charging consumers fees to use the most common payment methods to pay their auto loans, after the consumer was locked into a relationship with a servicer, that far exceeded the servicers' costs. Servicers leveraged their captive customer base and profited off payment fees through kickback incentive payments. These consumers were unable to protect their interests in selecting or using a consumer financial product or service because the dealer, not the consumer, selected the servicer. Consumers thus could not evaluate a servicer's payment processing fees, bargain over these fees, or switch to a servicer with lower-cost or more no-fee payment options.

In addition, examiners found that these practices were unfair. The payment processing fees constituted substantial injury. Because consumers did not choose their auto loan servicers, they could not reasonably avoid these costs by bargaining with the servicer over the fees or switching to another servicer; moreover, consumers without bank accounts, who were unaware of the payment structure, or who have other obstacles to ACH or check payments, could not use the free payment methods and thus could not reasonably avoid paying the fees. And the injury to consumers was not outweighed by benefits to consumers or competition.

In response to these findings, Supervision directed the servicers to cease the practice.

2.3 Mortgage Servicing

In conducting mortgage servicing examinations, examiners identified a number of UDAAPs and a Regulation Z violation related to junk fees. Examiners found that servicers charged consumers junk fees that were unlawful related to late fee amounts, unnecessary property inspection visits, and private mortgage insurance (PMI) charges that should have been billed to the lender. Servicers also failed to waive certain charges when consumers entered permanent loss mitigation options and failed to refund PMI premiums. And servicers charged consumers late fees after sending periodic statements representing that they would not charge late fees.

2.3.1 Overcharging Late Fees

Examiners found that servicers engaged in unfair acts or practices by assessing late fees in excess of the amounts allowed by their loan agreements. Specifically, where loan agreements included a maximum permitted late fee amount, the servicers failed to input these late fee caps into their systems. Because the systems did not reflect the maximum late fee amounts permitted by their loan agreements, the servicers charged the maximum allowable late fees under the relevant State laws, which frequently exceeded the specific caps in the loan agreements. The servicers caused substantial injury to consumers when they imposed these excessive late fees. Consumers could not reasonably avoid the injury because they do not control how servicers calculate late fees and had no reason to anticipate that servicers would impose excessive late fees. Charging excessive late fees had no benefits to consumers or competition. Examiners concluded that servicers also violated Regulation Z [15] by issuing periodic statements that included inaccurate late payment fee amounts, since they exceeded the amounts allowed by the loan agreements. In response to these findings, servicers waived or refunded late fee overcharges to consumers and corrected the periodic statements.

2.3.2 Repeatedly Charging Consumers for Unnecessary Property Inspections

Mortgage investors generally require servicers to perform property inspection

[14] 12 U.S.C. 5531(d)(2)(B).

[15] 12 CFR 1026.41(d)(1)(ii).

visits for accounts that reach a specified level of delinquency. Generally, servicers must complete these property inspections monthly. To satisfy this requirement, servicers hire a third party that sends an agent to physically locate and view the property. The servicers then pass along the cost of the property inspection to the consumer, with fees ranging from $10 to $50.

Examiners found that in some instances a property inspector would report to servicers that an address was incorrect, and that the inspectors could not locate the property because of this error. Despite knowing that the address was incorrect, the servicers repeatedly hired property inspectors to visit these properties. Examiners found that servicers engaged in an unfair act or practice when they charged consumers for repeat property preservation visits to known bad addresses. Charging consumers for property inspection fees to known bad addresses caused consumers substantial injury. Consumers were unable to anticipate the fees or mitigate them because they have no influence over the servicers' practices, and the servicers did not inform consumers that they had bad addresses. And the injury caused by the practice was not outweighed by countervailing benefits to consumers or competition.

In response to the findings, the servicers revised their policies and procedures and waived or refunded the fees.

2.3.3 Misrepresenting That Consumers Owed PMI Premiums

Examiners found that servicers engaged in deceptive acts or practices by sending monthly periodic statements and escrow disclosures that included monthly private mortgage insurance (PMI) premiums that consumers did not owe. These consumers did not have borrower-paid PMI on their accounts; instead, the loans were originated with lender-paid PMI, which should not be billed directly to consumers. After receiving these statements and disclosures some consumers made overpayments that included these amounts.

A representation, omission, act, or practice is deceptive when: (1) The representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) The consumer's interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act, or practice is material.[16] The servicers' statements were likely to mislead consumers by creating the false impression that PMI payments were due. It was reasonable for consumers to rely on the servicers' calculations to determine the appropriate monthly payment amount. Finally, the misrepresentations were material because they led to overpayments. In response to these findings, the servicers refunded any overpayments.

2.3.4 Charging Consumers Fees That Should Have Been Waived

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) directs servicers of federally backed mortgages to grant consumers a forbearance from monthly mortgage payments if the consumer is experiencing a financial hardship as a result of the COVID–19 emergency. During the time a consumer is in forbearance, no fees, penalties, or additional interest beyond scheduled amounts are to be assessed. While the CARES Act prohibits fees, penalties, or additional interest beyond scheduled amounts during a forbearance period, consumers sometimes accrue these amounts during periods when they are not in forbearance. For example, a servicer could appropriately charge a late fee if a consumer was delinquent in May 2020 and then entered a forbearance in June 2020.

When consumers with Federal Housing Administration-insured loans exited CARES Act forbearances and entered certain permanent loss mitigation options, the Department of Housing and Urban Development (HUD) required servicers in certain circumstances to waive late charges, fees, and penalties accrued outside of forbearance periods.

Examiners found that servicers engaged in unfair acts or practices when they failed to waive certain late charges, fees, and penalties accrued outside forbearance periods, where required by HUD, upon a consumer entering a permanent COVID–19 loss mitigation option.[17] Failure to waive the late charges, fees, and penalties constituted substantial injury to consumers. This injury was not reasonably avoidable by consumers because they had no reason to anticipate that their servicer would fail to follow HUD requirements, and consumers lacked reasonable means to avoid the charges. This harm outweighed any benefit to consumers or competition. In response to the finding, the servicers improved their controls, waived all improper charges, and provided refunds to consumers.

2.3.5 Charging Consumers for PMI After It Should Have Been Removed

The Homeowners Protection Act (HPA) requires that servicers automatically terminate PMI when the principal balance of the mortgage loan is first scheduled to reach 78 percent of the original value of the property based on the applicable amortization schedule, as long as the borrower is current.[18] Examiners found that servicers violated the HPA when they failed to terminate PMI on the date the principal balance of the mortgage was first scheduled to reach 78 percent loan-to-value on a mortgage loan that was current. As a result, consumers made overpayments for PMI that the servicers should have cancelled. In response to these findings, the servicers refunded excess PMI payments and implemented additional procedures and controls to enhance their PMI handling.[19]

2.3.6 Charging Late Fees After Sending Periodic Statements Listing a $0 Late Fee

Examiners found that servicers sent periodic statements to consumers in their last month of forbearance that incorrectly listed a $0 late fee amount for the subsequent payment, when a late fee was in fact charged if a payment was late. For example, consumers whose loans were in a forbearance period that ended on October 31st received a periodic statement during October billing for the November 1st payment; the periodic statement listed a $0 late fee amount. But because the November 1st payment was due after the forbearance period ended, the servicers then charged these consumers their contractual late fee amount if they missed the November 1st payment, despite sending statements listing a $0 late fee.

Examiners found that this practice was deceptive. Consumers' interpretation that they would incur no late fee was reasonable under the circumstances; consumers reasonably assume that the payment amounts and fees servicers tell them to pay are accurate and truthful. And the misrepresentations were likely to be material because consumers may have elected to make a timely periodic

[16] 12 U.S.C. 5531 and 5536(a)(1)(B).

[17] The Bureau previously reported a different unfair act or practice of charging fees to consumers during a CARES Act forbearance in *Supervisory Highlights, Issue 25, Fall 2021,* available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf.*

[18] 12 U.S.C. 4902(b)(1).

[19] The Bureau previously reported similar violations in *Supervisory Highlights, Issue 25, Fall 2021,* available at: *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-25_2021-12.pdf.*

payment if the servicers had accurately advised a late fee would be assessed.

In response to this finding, the servicers updated their periodic statements and waived or refunded late fee charges for the specific payments.

2.4 Payday and Small-Dollar Lending

2.4.1 Splitting and Re-Presenting Consumer Payments Without Authorization

Examiners found that lenders, in connection with payday, installment, title, and line-of-credit loans, after unsuccessful debit attempts, split missed payments into as many as four sub-payments and simultaneously or near-simultaneously represented them to consumers' banks for payment via debit card.

Examiners found that lenders engaged in unfair acts or practices when they re-presented split payments from consumers' accounts without their authorization to do so simultaneously or near-simultaneously. As a consequence, consumers incurred or were likely to incur injury in the form of multiple overdraft fees, indirect follow-on fees, unauthorized loss of funds, and inability to prioritize payment decisions. Injury was not reasonably avoidable because lenders did not disclose, and consumers had not authorized, same-day, simultaneous or near-simultaneous split debit processing. Substantial injuries were not outweighed by countervailing benefits to consumers or to competition.

In response to these findings, lenders were directed to: (1) provide remediation; (2) stop engaging in split-debit or other payment re-presentment attempts following an initial failed debit attempt, without first obtaining the consumer's authorization as to the manner and timing of the re-presentments; and (3) stop the practice of splitting the single amount owed into several debit attempts, unless the consumer has sufficient time between each debit attempt to learn of any successful debits and to take action to avoid incurring unwanted consequences, such as bank overdraft fees, indirect follow-on fees, unauthorized loss of funds, or inability to prioritize payment decisions.

2.4.2 Charging Borrowers Repossession-Related Fees Not Authorized in Automobile Title Loan Contracts

Examiners found that lenders engaged in unfair acts or practices when they charged borrowers fees to retrieve personal property from repossessed vehicles and to cover servicer charges, and withheld the personal property and vehicles until borrowers paid the fees. The practices caused or were likely to cause substantial injury when lenders, through their repossession agents, withheld personal property and vehicles until consumers paid unexpected personal property retrieval fees and agent fees for vehicle redemption. In addition to being subject to unexpected fees, borrowers faced being denied access to or destruction of property such as medical equipment and vehicles necessary for basic life functions. Potential countervailing benefits to consumers or to competition did not outweigh the substantial injuries caused.

Lenders were directed to enhance their compliance management systems to prevent these practices and to provide remediation to affected consumers.

2.4.3 Failure to Timely Stop Repossessions, Charging Fees and Refinancing Despite Prior Payment Arrangements

Examiners found that lenders engaged in unfair acts or practices by failing to stop vehicle repossessions before title loan payments were due as-agreed, and then withholding the vehicles until consumers paid repossession-related fees and refinanced their debts. The practice caused or was likely to cause substantial injury by depriving consumers of their means of transportation and of the contents of their vehicles including medication, by causing them to spend time reclaiming the vehicles, and by imposing repossession fees and refinancing costs. Consumers had no way to stop lenders from disregarding payment agreements specifically designed to prevent repossession. Therefore, they could not reasonably anticipate or avoid the injuries caused. Countervailing benefits of the practice, such as the cost of implementing controls to prevent wrongful repossessions, did not outweigh the substantial injury caused.

Lenders were directed to enhance their compliance management systems to prevent these practices and to provide remediation to affected consumers.

2.5 Student Loan Servicing

2.5.1 Charging Late Fees and Interest After Reversing Payments

Examiners found that servicers engaged in unfair acts or practices by initially processing payments but then later reversing those payments, leading to additional late fees and interest for consumers. Although the servicers' policies did not allow student loan payments to be made with a credit card, customer service representatives erroneously accepted credit card payment information from some consumers over the phone and then processed those credit card payments. Subsequently, the servicers manually reversed the payments because they violated their policies. As a result, consumers became delinquent on their accounts and suffered substantial injury in the form of late fees, negative credit reporting, and additional accrued interest. Consumers could not reasonably avoid the injury because they could not anticipate that servicers would reverse payments after initially accepting them, and the servicers did not send notices explaining the reversals in all cases. Moreover, the servicers did not provide consumers with an opportunity to make a payment with another method before reversing the payments. Finally, retroactively reversing credit card payments, as opposed to implementing measures to prevent such payments in the first instance, has no benefits to consumers or to competition. In response to these findings, the servicers enhanced controls to ensure that payment processing systems will not accept credit card payments and to train customer service representatives to inform consumers at the time of payment that credit cards are not accepted. Additionally, Supervision directed the servicers to reimburse any late fees and correct any negative credit reporting as a result of reversed credit card payments.

3. Supervisory Program Developments

3.1 Recent Bureau Supervisory Program Developments

Set forth below are CFPB-issued circulars, bulletins, advisory opinions, and proposed rules regarding fees.[20]

3.1.1 CFPB Proposed a Rule To Curb Excessive Credit Card Late Fees

On February 1, 2023, the CFPB proposed a rule to curb excessive credit card late fees that cost American families about $12 billion each year.[21] The CFPB's proposed rule would amend regulations implementing the CARD Act to ensure that late fees meet the Act's requirement to be ''reasonable and proportional'' to the costs incurred by issuers to handle late payments.

[20] Some of these items were also referenced in the last edition of *Supervisory Highlights.*

[21] The proposed rule is available at: *https://www.consumerfinance.gov/rules-policy/notice-opportunities-comment/credit-card-penalty-fees-regulation-z/.*

Specifically, the proposed rule would lower the immunity provision for late fees to $8 for a missed payment and end the automatic annual inflation adjustment. The proposed rule would also ban late fee amounts above 25% of the consumer's required payment.

3.1.2 CFPB Issued Circular on Unanticipated Overdraft Fee Assessment Practices

On October 26, 2022, the CFPB issued guidance indicating that overdraft fees may constitute an unfair act or practice under the CFPA, even if the entity complies with the Truth in Lending Act (TILA) and Regulation Z, and the Electronic Fund Transfer Act (EFTA) and Regulation E.[22] As detailed in the circular, when financial institutions charge surprise overdraft fees, sometimes as much as $36, they may be breaking the law. The circular provides some examples of potentially unlawful surprise overdraft fees, including charging fees on purchases made with a positive balance. These overdraft fees occur when a bank displays that a customer has sufficient available funds to complete a debit card purchase at the time of the transaction, but the consumer is later charged an overdraft fee. Often, the financial institution relies on complex back-office practices to justify charging the fee. For instance, after the bank allows one debit card transaction when there is sufficient money in the account, it nonetheless charges a fee on that transaction later because of intervening transactions.

3.1.3 CFPB Issued Bulletin on Unfair Returned Deposited Item Fee Assessment Practices

On October 26, 2022, the CFPB issued a bulletin [23] stating that blanket policies of charging returned deposited item fees to consumers for all returned transactions irrespective of the circumstances or patterns of behavior on the account are likely unfair under the CFPA.

3.1.4 CFPB Issued Advisory Opinion on Debt Collectors' Collection of Pay-to-Pay Fees

On June 29, 2022, the CFPB issued an advisory opinion [24] affirming that Federal law often prohibits debt collectors from charging ''pay-to-pay'' fees. These charges, commonly described by debt collectors as ''convenience fees,'' are imposed on consumers who want to make a payment in a particular way, such as online or by phone.

4. Remedial Actions

4.1 Public Enforcement Actions

The Bureau's supervisory activities resulted in and supported the following enforcement action.

4.1.1 Wells Fargo

On December 20, 2022, the CFPB and Wells Fargo entered into a consent order in which Wells Fargo will pay more than $2 billion in redress to consumers and a $1.7 billion civil penalty for legal violations across several of its largest product lines.[25] The bank's illegal conduct led to billions of dollars in financial harm to its customers and, for thousands of customers, the loss of their vehicles and homes. Consumers were illegally assessed fees and interest charges on auto and mortgage loans, had their cars wrongly repossessed, and had payments to auto and mortgage loans misapplied by the bank. Wells Fargo also improperly froze or closed customer deposit accounts, charged consumers unlawful surprise overdraft fees, and did not always waive monthly account service fees consistent with its disclosures. Under the terms of the order, Wells Fargo will pay redress to the over 16 million affected consumer accounts, and pay a $1.7 billion fine, which will go to the CFPB's Civil Penalty Fund, where it will be used to provide relief to victims of consumer financial law violations.

4.1.2 Regions Bank

On September 28, 2022, the CFPB ordered Regions Bank to pay $50 million into the CFPB's victims relief fund and to refund at least $141 million to customers harmed by its illegal surprise overdraft fees.[26] Until July 2021, Regions charged customers surprise overdraft fees on certain ATM withdrawals and debit card purchases. The bank charged overdraft fees even after telling consumers they had sufficient funds at the time of the transactions. The CFPB also found that Regions Bank leadership knew about and could have discontinued its surprise overdraft fee practices years earlier, but they chose to wait while Regions pursued changes that would generate new fee revenue to make up for ending the illegal fees.

This is not the first time Regions Bank has been caught engaging in illegal overdraft abuses. In 2015, the CFPB found that Regions had charged $49 million in unlawful overdraft fees and ordered Regions to make sure that the fees had been fully refunded and pay a $7.5 million penalty for charging overdraft fees to consumers who had not opted into overdraft protection and to consumers who had been told they would not be charged overdraft fees.[27]

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–05667 Filed 3–20–23; 8:45 am]

BILLING CODE 4810–AM–P

[22] Consumer Financial Protection Circular 2022–06, Unanticipated Overdraft Fee Assessment Practices (Oct. 26, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_unanticipated-overdraft-fee-assessment-practices_circular_2022-10.pdf.*

[23] Bulletin 2022–06: Unfair Returned Deposited Item Fee Assessment Practices, available at: *https://files.consumerfinance.gov/f/documents/cfpb_returned-deposited-item-fee-assessment-practice_compliance-bulletin_2022-10.pdf.*

[24] Advisory Opinion on Debt Collectors' Collection of Pay-to-Pay Fees, available at: *https://files.consumerfinance.gov/f/documents/cfpb_convenience-fees_advisory-opinion_2022-06.pdf.*

[25] CFPB Consent Order 2022–CFPB–0011, In the Matter of Wells Fargo Bank (Dec. 20, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_wells-fargo-na-2022_consent-order_2022-12.pdf.*

[26] CFPB Consent Order 2022–CFPB–0008, In the Matter of Regions Bank (Sept. 28, 2022), available at: *https://files.consumerfinance.gov/f/documents/cfpb_Regions_Bank-_Consent-Order_2022-09.pdf.*

[27] CFPB Consent Order 2015–CFPB–0009, In the Matter of Regions Bank (Apr. 28, 2015), available at: *https://files.consumerfinance.gov/f/201504_cfpb_consent-order_regions-bank.pdf.*

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2023–0020]

Request for Information Regarding Data Brokers and Other Business Practices Involving the Collection and Sale of Consumer Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Request for public comment.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is seeking comments from the public related to data brokers. The submissions in response to this request for information will serve to assist the CFPB and policymakers in understanding the current state of business practices in exercising enforcement, supervision, regulatory, and other authorities.

DATES: Comments must be received on or before June 13, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2023–0020, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: DataBrokersRFI_2023@cfpb.gov.* Include the document title and Docket No. CFPB–2023–0020 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake, Request for Information Regarding Data Brokers, Consumer Financial Protection Bureau, c/o Legal Division Docket Manager, 1700 G Street NW, Washington, DC 20552. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically.

Instructions: The CFPB encourages the early submission of comments. All submissions should include the agency name and docket number for this request for information. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics.) In general, all comments received will be posted without change to *https://www.regulations.gov.* All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Erie Meyer, Chief Technologist and Senior Advisor, Office of the Director; Davida Farrar, Counsel, Office of Consumer Populations at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1970, Congress enacted the Fair Credit Reporting Act (FCRA),[1] one of the first data privacy laws in the world. The primary sponsor of the legislation, Senator William Proxmire, at the time publicly described an emerging consumer reporting market involving the dissemination of a wide range of information about Americans, including financial status, bill paying records, public records including arrests, suits, and judgments, dossiers, information on drinking, marital discords, adulterous behavior, general reputation, habits, and morals. The Senator stressed that ''while the growth of this information network is somewhat alarming, what is even more alarming is the fact that the system has been built with virtually no public regulation or supervision.'' [2]

Before voting on the FCRA, Congress held a series of investigative hearings and uncovered a wide variety of abuses in the industry. For example, Congress found that many consumers were unaware of the existence of the industry because non-disclosure agreements between consumer reporting agencies and users hid the arrangement behind a shroud of secrecy.[3] In addition, the hearings revealed the practice of including disclaimers of accuracy in agreements between consumer reporting agencies and creditors; before the FCRA, consumer reporting agencies purported to be mere transmitters of information who were not responsible for accuracy.[4] Congress also criticized the fact that consumers were not given access to their credit reports,[5] and that credit reports often included obsolete or irrelevant information.[6]

Ultimately, Congress found that consumer reporting agencies assumed a vital role in assembling and evaluating consumer credit and other information on consumers to meet the needs of commerce, but that rules were necessary to ensure they handed information fairly and equitably with regard to confidentiality, accuracy, relevancy, and proper use.[7] The FCRA established comprehensive rules to govern the practices of consumer reporting agencies, including four key features: (1) a prohibition on using or disseminating certain personal data outside prescribed permissible purposes selected by Congress,[8] (2) a requirement that consumer reporting agencies ''follow reasonable procedures to assure maximum possible accuracy'' of consumer reports,[9] (3) a right of consumers to inspect data about themselves,[10] and (4) due process to challenge false data.[11]

The FCRA still remains on the books and has been amended from time to time.[12] But since the enactment of the FCRA, companies using business models that sell consumer data have emerged and evolved with the growth of the internet and advanced technology. Many companies whose business models rely on newer technologies and novel methods purport not to be covered by the FCRA. These companies are sometimes labeled ''data brokers,'' ''data aggregators,'' or ''platforms,'' but they all share a fundamental characteristic with consumer reporting agencies—they collect and sell personal data.

With the passage of the Consumer Financial Protection Act (CFPA), Congress transferred rulemaking authority for most provisions of the FCRA from the Federal Trade Commission to the CFPB. The CFPA granted the CFPB the authority to enforce the FCRA along with other Federal regulators.[13] The CFPA also granted the CFPB various additional authorities that may be applicable to companies that collect and sell personal data, including, for example, authorities pursuant to the Gramm-Leach Bliley Act's privacy provisions.[14] The CFPB has used its authority to address unfair or deceptive acts or practices related to the handling of consumer data.[15]

This request for information is seeking information to (1) help inform the CFPB about new business models that sell consumer data, including information relevant to assessments of whether companies using these new business models are covered by the FCRA, given the FCRA's broad definitions of ''consumer report'' and ''consumer reporting agency,'' [16] or other statutory authorities, and (2) collect information on consumer harm and any market abuses, including those that resemble harms Congress originally identified in 1970 in passing the FCRA.

II. Overview

Data brokers is an umbrella term to describe firms that collect, aggregate, sell, resell, license, or otherwise share consumers' personal information with other parties. Data brokers encompass actors such as first-party data brokers

[1] 15 U.S.C. 1681 *et seq.*

[2] 115 Cong. Rec. 2410 (1969).

[3] Robert M. McNamara Jr., *The Fair Credit Reporting Act: A Legislative Overview,* 22 J. Pub. L. 67, 80 (1973).

[4] Hearing on Retail Credit Co. of Atlanta, Ga., Before a Subcomm. on Invasion of Privacy of the House Comm. on Government Operations, 90th Cong., 2d Sess. 47 (1968).

[5] Hearings on Commercial Credit Bureaus Before a Subcomm. on Invasion of Privacy of the House Comm. on Government Operations, 90th Cong., 2d Sess. 10 (1968).

[6] *See* S. Rep. No. 517, 91st Cong., 1st Sess. 4 (1969).

[7] 15 U.S.C. 1681 (Congressional findings and statement of purpose for FCRA).

[8] 15 U.S.C. 1681b.

[9] 15 U.S.C. 1681e(b).

[10] 15 U.S.C. 1681g.

[11] 15 U.S.C. 1681i, 1681s–2.

[12] Consumer Credit Reporting Reform Act of 1996, Pub. L. 104–208 (1996).

[13] *See* 15 U.S.C. 1681s.

[14] *See, e.g.,* 12 U.S.C. 5481(12)(J) (specifying provisions of the Gramm-Leach-Bliley Act that qualify as ''enumerated consumer laws'' over which the Bureau has jurisdiction).

[15] *See, e.g.,* Consumer Financial Protection Circular 2022–04, *Insufficient data protection or security for sensitive consumer information, https://www.consumerfinance.gov/compliance/circulars/circular-2022-04-insufficient-data-protection-or-security-for-sensitive-consumer-information/.*

[16] *See* 15 U.S.C. 1681a(d), (f).

that interact with consumers directly, as well as third-party data brokers with whom the consumer does not have a direct relationship. Data brokers include firms that specialize in preparing employment background screening reports and credit reports. Data brokers collect information from public and private sources for purposes including marketing and advertising, building and refining proprietary algorithms, credit and insurance underwriting, consumer-authorized data porting, fraud detection, criminal background checks, identity verification, and people search databases.[17]

As part of the CFPB's statutory mandate to promote fair, transparent, and competitive markets for consumer financial products and services, this request for information is part of a series of efforts to examine data collection and use. In addition to supervision of consumer reporting agencies, including the three largest nationwide consumer reporting agencies, the CFPB endeavors to gain insight into the full scope of the data broker industry. The data broker industry is growing and expanding its reach into new spheres of consumers' personal lives, as more sophisticated computerization has increased the power of these companies to track and predict consumer behavior. Yet, many people lack an understanding of the scope and breadth of data brokers' business practices and the impact of those practices on the marketplace and peoples' daily lives.

The CFPB seeks to better understand the heterogeneity of these firms and to assist firms in understanding any compliance obligations under the FCRA and other laws as appropriate.

Data brokers collect or share a vast range of information, often building profiles of individuals by delving into the details of consumers' everyday interactions, including credit card purchases and web browsing activity. Data brokers also collect other types of sensitive and intimate personal information such as genetic and health information, religious affiliation, financial records, and geolocation data.[18]

Government agencies, technology and privacy experts, financial institutions, consumer advocates, and others have identified numerous consumer harms and abuses related to the operation of data brokers, including significant privacy and security risks, the facilitation of harassment and fraud, the lack of consumer knowledge and consent, and the spread of inaccurate information.[19]

People should be able to expect companies to safeguard their most personal and intimate information, and should be able to have knowledge and control over how companies obtain and use their data. Surveys have found that people are concerned about being tracked and surveilled by companies, and express concern about the lack of control over how data collected about them is used.[20]

While observers have documented the increasing role of data brokers in the economy, there is still relatively limited public understanding of their operations and other impacts.

III. Request for Information

This request for information seeks comments from the public on data brokers. The CFPB welcomes stakeholders to submit data, analysis, research, and other information about data brokers. The CFPB also requests input from individuals who have interacted with or have been affected by data broker business practices. To assist commenters in developing responses, the CFPB has crafted the below questions that commenters may answer. However, the CFPB is interested in receiving any comments relating to data brokers.

Market-Level Inquiries

1. What types of data do data brokers collect, aggregate, sell, resell, license, derive marketable insights from, or otherwise share?

a. What do data brokers do with the data they collect other than the aggregation, selling, reselling, or licensing of data?

b. Please provide information about specific types of data that are financial in nature, such as information about salary, income sources, spending, investments, assets, use of financial products or services, investments, signals of financial distress, etc.

2. What sources do data brokers rely on to collect information? What collection methods do data brokers use to source information?

a. What specific types of information do data brokers obtain from public records databases? Which public records sources do data brokers use?

b. Are people unknowingly deceived or manipulated into supplying data to data brokers? Describe the nature of such deception or manipulation.

c. What technological components facilitate brokers' collection of data, including but not limited to: tracking scripts, web-based plug-ins, pixels, or software development kits (SDKs) in Apps?

3. What specific types of information do data brokers receive from financial institutions? Do financial institutions place any restrictions on the use of this data? Under what circumstances do consumers consent to this data sharing or receive an opportunity to opt-out of this sharing?

4. What specific entities and types of entities have relationships (*e.g.,* partnerships, vendor relationships, investor relationships, joint ventures, retail arrangements, data share agreements, third-party pixel usage) with data brokers? Describe the nature of those relationships and any relevant financial arrangements pursuant to such relationships.

5. Which specific entities and types of entities collect, aggregate, sell, resell, license, or otherwise share consumers' personal information with other parties?

6. Does the granular nature of data brokers' collection of information related to consumer preferences and behaviors influence consumer purchasing patterns or levels of indebtedness? Describe the nature of such collection and how it may influence purchasing patterns.

7. How do companies collect consumer data to create, build, or refine proprietary algorithms?

8. Does consumer data collected by data brokers facilitate a less competitive marketplace or more expensive financial products for consumers, and if so, how?

9. Can people avoid having their data collected?

a. Are there certain special populations that are less likely to be able to exercise control over the collection, aggregation, sale, resale, licensing, or other sharing of their data?

b. If so, which special populations and why?

10. Under what circumstances is deidentified, ''anonymized,'' or

[17] *Data Brokers: A Call for Transparency and Accountability* at i–v, Federal Trade Commission (May 2014), *https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf.*

[18] *Data Brokers: A Call for Transparency and Accountability* at app. B, Federal Trade Commission (May 2014), *https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf.*

[19] *See, e.g.,* Justin Sherman, *Data Brokers and Sensitive Data on U.S. Individuals: Threats to American Civil Rights, National Security, and Democracy,* Duke Sanford Cyber Policy Program (Aug. 2021), *https://techpolicy.sanford.duke.edu/wp-content/uploads/sites/4/2021/08/Data-Brokers-and-Sensitive-Data-on-US-Individuals-Sherman-2021.pdf.*

[20] *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information,* Pew Research Center (Nov. 2019), *https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/.*

aggregated data reidentified or disaggregated?

11. Can people reasonably avoid adverse consequences resulting from data collection across different contexts (*e.g.,* cross-device tracking, re-identification, mobile fingerprint matching)?

12. Which specific entities and types of entities purchase data from data brokers? How do these entities use the purchased data?

a. What specific uses concern marketing, decisioning, fraud detection, or servicing related to consumer financial products and services?

b. What, if any, restrictions do data brokers impose on the use of such data?

13. What data broker practices cause harms to people? What are those harms and types of harms?

a. Are there certain special populations that are more likely to experience harms? If so, which special populations and why?

b. Are data brokers selling, reselling, or licensing information about particular groups, including certain protected classes? If so, what are examples of this behavior?

c. What harms do people experience if they are unable to remove their information from data broker repositories?

14. What data broker practices provide benefits to people? What are those benefits?

15. What actions can people take to gain knowledge or control over data, or correct data that is collected, aggregated, sold, resold, licensed, or otherwise shared about them?

16. How can and does the activity of data brokers and their clients impact consumers beyond those whose data were collected or used by that data broker? How, if at all, can consumers reasonably avoid being targeted or influenced based on the activities of data brokers and their clients, even if they are able to avoid or opt-out of having their own data collected?

17. What information do State-level data broker registries provide? How is this information made available and used? Are State-level data broker registries adequate to prevent harm? How could they be improved?

18. What controls do data brokers implement in order to protect people's data and safeguard the privacy and security of the public? Are these controls adequate?

a. What controls exist related to who can purchase or obtain information from data brokers?

b. Are these controls adequate?

19. What controls do data brokers implement to ensure the quality and accuracy of data they have collected?

a. What controls exist related to ensuring the quality and accuracy of public records data, including court records?

b. Are these controls adequate?

20. How have data broker practices evolved due to new technological developments, including machine learning or other advanced computational methods?

21. Are there companies or other entities that help consumers understand and manage their relationship to, and rights with respect to, data brokers? If not, why not? What factors could further help such consumer-assisting companies and entities?

22. How might the CFPB use its supervision, enforcement, research, rulemaking, or consumer complaint functions with respect to data brokers and related harms?

Individual Inquiries

1. Have you experienced data broker harms, including financial harms? What are those harms?

2. Have you experienced data broker benefits? What are those benefits?

3. Are you able to detect whether harms or benefits are tied to a specific data broker? Are existing methods of detection adequate?

4. Have you ever attempted to remove your data from a specific data broker's repository for privacy purposes? If so,

a. Describe your experience engaging with the data broker in question.

b. What steps were you required to take to request the removal of your data? Did you face any hurdles in filing the data removal request? Did the data broker honor your request?

c. Was your information removed immediately, and if not, how long did the removal take?

d. Were you asked to share additional information with the data broker to have your data removed?

e. Were you charged a fee by the data broker to have your data removed?

f. Did you spend money on another service to help you get your data removed? Was it helpful?

g. If your data removal request was successful, did you receive advertising to remove your data from other sites?

h. When you found your information on data broker websites, how did that make you feel?

5. Have you ever attempted to view or inspect the data maintained about you? If so, describe your experience.

a. What steps were you required to take to view or inspect your data?

b. Did you face any hurdles in filing the request to view or inspect your data?

c. Did the data broker honor your request?

6. Have you ever attempted to correct your data? If so, describe your experience.

a. What steps were you required to take to request correcting your data?

b. Did you face any hurdles in filing the data correction request?

c. Did the data broker honor your request?

7. Have you taken any other steps to protect your privacy or security as a result of data broker harms? Were these steps adequate?

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2023–05670 Filed 3–20–23; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2023–0022]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval of an existing information collection titled ''Truth in Lending Act (Regulation Z)'' approved under OMB Number 3170–0015.

DATES: Written comments are encouraged and must be received on or before April 20, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov*. If you require this document in an alternative electronic format,

please contact *CFPB_Accessibility@cfpb.gov*. Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Truth in Lending Act (Regulation Z).

OMB Control Number: 3170–0015.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private sector: businesses or other for-profits; not-for-profits institutions.

Estimated Number of Respondents: 17,215.

Estimated Total Annual Burden Hours: 1,345,102.

Abstract: The Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers and to protect consumers against inaccurate and unfair credit billing practices. Creditors are subject to disclosure and other requirements that apply to open-end credit (*e.g.,* revolving credit or credit lines) and closed-end credit (e.g, installment financing). TILA imposes disclosure requirements on all types of creditors in connection with consumer credit, including mortgage companies, finance companies, retailers, and credit card issuers, to ensure that consumers are fully apprised of the terms of financing prior to consummation of the transaction and, as applicable, during the loan term.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on January 11, 2023 (88 FR 1566) under Docket Number: CFPB–2023–0003. The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2023–05757 Filed 3–20–23; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Generic Information Collection Request for Qualitative Feedback on Agency Service Delivery

AGENCY: Corporation for National and Community Service.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted an information collection request entitled Generic Information Collection Request for Qualitative Feedback on Agency Service Delivery for review and approval in accordance with the Paperwork Reduction Act.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 20, 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: Copies of this ICR, with applicable supporting documentation, may be obtained by calling AmeriCorps, Amy Borgstrom, at (202) 422–2781 or by email to *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on January 10, 2023 at 88 FR 1367. This comment period ended March 13, 2023. No public comments were received from this Notice.

Title of Collection: Generic Information Collection Request for Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 3045–0137.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 10,000.

Total Estimated Number of Annual Burden Hours: 16,667.

Abstract: This collection was developed as part of a Federal government-wide effort to streamline the process for seeking feedback from the public on agency service delivery. AmeriCorps seeks to renew the current information collection without revisions. The information collection will be used in the same manner as the existing application. AmeriCorps also seeks to continue using the current application until the revised application is approved by OMB. The current application expired on February 28, 2023.

Amy Borgstrom,

Associate Director of Policy.

[FR Doc. 2023–05663 Filed 3–20–23; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0104]

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 April 20, 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: Defense Organizational Climate Survey; OMB Control Number 0704–DOCS.

Type of Request: Existing collection in use without an OMB control number.

Number of Respondents: 1,589,098.

Responses per Respondent: 1.

Annual Responses: 1,589,098.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 794,549.

Needs And Uses: The Defense Organizational Climate Survey (DEOCS) is fielded in response to Section 572 of the National Defense Authorization Act for Fiscal Year 2013. A May 2019 memo from the Acting Secretary of Defense directed that the goals of the DEOCS include developing and providing leaders with assessment tools ''that help them with developing an appropriate course of action from a suite of interventions and provide them with feedback on their impact of their efforts.'' The information gathered from the DEOCS will be used by commanders, prevention workforce personnel, equal opportunity officers, survey administrators, and other leaders to assess the unit's command climate and measure the risk and protective factors associated with the six strategic target outcomes (sexual assault, sexual harassment, racial/ethnic discrimination, suicide, readiness, and retention). Based on the DEOCS results, commanders, leaders, and their survey administrators will develop an action plan to positively impact their organization's leadership climate. The survey results are provided to the commander/leader and their survey administrator. Survey responses could also be used in future analyses. The statutory and policy requirements for the DEOCS can be found in the following:

FY13 NDAA, Section 572
FY14 NDAA, Section 1721
Memo from the Acting Secretary of Defense, May 2019

Affected Public: Individuals or households.

Frequency: On occasion.

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: March 15, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2023–05678 Filed 3–20–23; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

Time and Date: 11:00 a.m.–12:00 p.m., March 21, 2023.

Place: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

Status: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemption to close a meeting described in 5 U.S.C. 552b(c)(3) and 10 CFR 1704.4(c). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

Matters To Be Considered: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov.* Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

Contact Person for More Information: Tara Tadlock, Associate Director for Board Operations, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: March 15, 2023.

Joyce Connery,

Chair.

[FR Doc. 2023–05850 Filed 3–17–23; 11:15 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Undergraduate International Studies and Foreign Language Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications (NIA) for fiscal year (FY) 2023 for the Undergraduate International Studies and Foreign Language (UISFL) Program, Assistance Listing Number 84.016A. This notice relates to the approved information collection under OMB control number 1840–0796.

DATES:

Applications Available: March 21, 2023.

Deadline for Transmittal of Applications: May 22, 2023.

Preapplication Webinar Information and Applicant Resources: The Department will hold a pre-application meeting via webinar for prospective applicants. Detailed information regarding this webinar will be provided on the International and Foreign Language Education's website at *www2.ed.gov/about/offices/list/ope/iegps/index.html.* Additionally, for prospective applicants that have never received a grant from the Department and those that are interested in learning

more about the process, please review the grant funding basics resource at *https://www2.ed.gov/documents/funding-101/funding-101-basics.pdf.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Jessica Lugg, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20222. Telephone (202) 987–1914. Email: *UISFL@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The UISFL program provides grants for planning, developing, and carrying out projects to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Priorities: This notice contains two competitive preference priorities and one invitational priority. Competitive Preference Priority 1 is from the notice of final priority (NFP) for this program published in the **Federal Register** on June 11, 2014 (79 FR 33432). Competitive Preference Priority 2 is from 34 CFR 658.35(a).

Note: Applicants must indicate in the recommended one-page abstract and on the FY 2023 UISFL program Profile Form in the application package whether they intend to address one competitive preference priority or both competitive preference priorities and/or the invitational priority.

Competitive Preference Priorities: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional 2 or 3 points to an application that meets Competitive Preference Priority 1, depending on how well the application meets the priority, and an additional 2 points to an application that meets Competitive Preference Priority 2, for a maximum of 5 additional points. An application that does not meet the Competitive Preference Priorities will not receive any additional points.

These priorities are:

Competitive Preference Priority 1 (0, 2, or 3 points).

Applications from Minority-Serving Institutions (MSIs) (as defined in this notice) or community colleges (as defined in this notice), whether as individual applicants or as part of a consortium of institutions of higher education (IHEs) or a partnership between nonprofit educational organizations and IHEs.

An application from a consortium or partnership that has an MSI or a community college as the lead applicant will receive more points under this priority than applications in which the MSI or community college is a member of the consortium or partnership, but not the lead applicant.

A consortium or partnership must undertake activities designed to incorporate foreign languages into the curriculum of the MSI or community college and to improve foreign language and international or area studies instruction on the MSI or community college campus.

Note: We will award either 2 or 3 points to an application that meets this priority. If an MSI or a community college is a single applicant, or the lead applicant in a consortium or partnership, the application will receive 3 additional points. If an MSI or a community college is a member of a consortium or partnership, but not the lead applicant, the application will receive 2 additional points. No application will receive more than 3 additional points for this priority.

Competitive Preference Priority 2 (0 or 2 points).

Applications from IHEs or consortia of these institutions that require incoming students to have successfully completed at least 2 years of secondary school foreign language instruction or that require each graduating student to earn 2 years of postsecondary credit in a foreign language (or have demonstrated equivalent proficiency in the foreign language); or, in the case of a 2-year degree granting institution, offer 2 years of postsecondary credit in a foreign language.

Invitational Priority: For FY 2023, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Training in Less Commonly Taught Languages or Thematic Focus on Area Studies or International Studies Programs.

Applications that propose programs or activities focused on language training or the development of area or international studies programs focused on contemporary topics or themes in conjunction with training in any modern foreign languages, except French, German, or Spanish.

Definitions: The following definitions are from the NFP.

Community college means an institution that meets the definition in section 312(f) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1058(f)); or an IHE (as defined in section 101 of the HEA (20 U.S.C 1001)) that awards degrees and certificates, more than 50 percent of which are not bachelor's degrees (or an equivalent) or master's, professional, or other advanced degrees.

Minority-Serving Institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Note: The list of institutions currently designated as eligible under title III and title V is available at: *https://www2.ed.gov/about/offices/list/ope/idues/eligibility.html.*

Application Requirements: In addition to any other requirements outlined in the application package for this program, section 604(a)(7) of the HEA, 20 U.S.C. 1124(a)(7), requires that each application from an IHE, consortia, or partnership include—

(1) Evidence that the applicant has conducted extensive planning prior to submitting the application;

(2) An assurance that the faculty and administrators of all relevant departments and programs served by the applicant are involved in ongoing collaboration with regard to achieving the stated objectives of the application;

(3) An assurance that students at the applicant institutions, as appropriate, will have equal access to, and derive benefits from, the UISFL program;

(4) An assurance that each applicant, consortium, or partnership will use the Federal assistance provided under the UISFL program to supplement and not supplant non-Federal funds the institution expends for programs to improve undergraduate instruction in international studies and foreign languages;

(5) A description of how the applicant will provide information to students regarding federally funded scholarship programs in related areas;

(6) An explanation of how the activities funded by the grant will reflect diverse perspectives and a wide range of views, and generate debate on world regions and international affairs, where applicable; and

(7) A description of how the applicant will encourage service in areas of national need, as identified by the Secretary.

Program Authority: 20 U.S.C. 1124, 1127–1128.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 34 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 34 CFR part 3474. (d) The regulations in 34 CFR parts 655 and 658. (e) The NFP.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $2,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in future fiscal years from the list of unfunded applications from this competition.

Estimated Range of Awards:

For single applicant grants: $70,000–$150,000 for each 12-month budget period.

For consortia or partnership grants: $90,000–$180,000 for each 12-month budget period.

Estimated Average Size of Awards:

For single applicant grants: $103,603.

For consortia or partnership grants: $141,000.

Maximum Award: We will not make an award exceeding $150,000 for a single applicant for a single budget period of 12 months, or an award exceeding $180,000 for a consortium or partnership applicant for a single budget period of 12 months.

Estimated Number of Awards: 22.

Note: The Department is not bound by any estimates in this notice.

Project Period:

For single applicant grants: Up to 24 months.

For consortia or partnership grants: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) IHEs; (b) consortia of IHEs; (c) partnerships between nonprofit educational organizations and IHEs; and (d) public and private nonprofit agencies and organizations, including professional and scholarly associations.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This program has a matching requirement under section 604(a)(3) of the HEA, 20 U.S.C. 1124(a)(3), and the regulations for this program in 34 CFR 658.41. UISFL program grantees must provide matching funds in either of the following ways: (i) cash contributions from private sector corporations or foundations equal to one-third of the total project costs; or (ii) a combination of institutional and noninstitutional cash or in-kind contributions, including State and private sector corporation or foundation contributions, equal to one-half of the total project costs. The Secretary may waive or reduce the required matching share for institutions that are eligible to receive assistance under part A or part B of title III or under title V of the HEA that have submitted an application that demonstrates a need for a waiver or reduction.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements, which are described in section 604(a)(7)(D) of the HEA, 20 U.S.C. 1124(a)(7)(D).

c. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or 8 percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www2.ed.gov/about/offices/list/ocfo/intro.html.*

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c), a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs, nonprofit organizations, professional organizations, or businesses. The grantee may award subgrants to entities it has identified in the approved application or that it selects through a competition under procedures established by the grantee.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the UISFL grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as

amended). Consistent with the process followed in the FY 2022 UISFL competition, we plan to post on our website a selection of funded abstracts and applications' narrative sections.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions:* We specify unallowable costs in 34 CFR 658.40. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative (Part III) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, budget section, including the narrative budget justification; Part IV, the assurance and certifications; or the abstract, the resumes, the biography, or letters of support. However, the recommended page limit does apply to the entire application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 658.31, 658.32, 658.33, and 655.32. The maximum score for all the selection criteria, together with the maximum number of points awarded to applicants that address the competitive preference priorities, is 105 points for applications from IHEs, consortia, and partnerships; and 100 points for applications from public and private nonprofit agencies and organizations, including professional and scholarly associations. The maximum score for each criterion is indicated in parentheses.

All Applications. All applications will be evaluated based on the general selection criteria as follows:

(a) *Plan of operation (up to 15 points).* (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women; and

(C) Handicapped persons.

(b) *Quality of key personnel (up to 10 points).* (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project. In the case of faculty, the qualifications of the faculty and the degree to which that faculty is directly involved in the actual teaching and supervision of students;

(iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness (up to 10 points).*

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan (up to 20 points).* (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources (up to 5 points).* (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) Other than library, facilities that the applicant plans to use are adequate (language laboratory, museums, etc.); and

(ii) The equipment and supplies that the applicant plans to use are adequate.

Applications from IHEs, Consortia, or Partnerships. Applications submitted by IHEs, consortia, or partnerships will also be evaluated based on the following criteria:

(f) *Commitment to international studies (up to 15 points).* (1) The Secretary reviews each application for information that shows the applicant's commitment to the international studies program.

(2) The Secretary looks for information that shows—

(i) The institution's current strength as measured by the number of international studies courses offered;

(ii) The extent to which planning for the implementation of the proposed program has involved the applicant's faculty, as well as administrators;

(iii) The institutional commitment to the establishment, operation, and continuation of the program as demonstrated by optimal use of available personnel and other resources; and

(iv) The institutional commitment to the program as demonstrated by the use

of institutional funds in support of the program's objectives.

(g) *Elements of the proposed international studies program (up to 10 points).* (1) The Secretary reviews each application for information that shows the nature of the applicant's proposed international studies program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities will contribute to the implementation of a program in international studies and foreign languages at the applicant institution;

(ii) The interdisciplinary aspects of the program;

(iii) The number of new and revised courses with an international perspective that will be added to the institution's programs; and

(iv) The applicant's plans to improve or expand language instruction.

(h) *Need for and prospective results of the proposed program (up to 15 points).* (1) The Secretary reviews each application for information that shows the need for and the prospective results of the applicant's proposed program.

(2) The Secretary looks for information that shows—

(i) The extent to which the proposed activities are needed at the applicant institution;

(ii) The extent to which the proposed use of Federal funds will result in the implementation of a program in international studies and foreign languages at the applicant institution;

(iii) The likelihood that the activities initiated with Federal funds will be continued after Federal assistance is terminated; and

(iv) The adequacy of the provisions for sharing the materials and results of the program with other IHEs.

Applications from Public and Private Nonprofit Agencies and Organizations, Including Professional and Scholarly Associations. Applications from public and private nonprofit agencies and organizations, including professional and scholarly associations, will also be evaluated based on the following criteria:

Need for and potential impact of the proposed project in improving international studies and the study of modern foreign language at the undergraduate level (up to 40 points).

(1) The Secretary reviews each application for information that shows the need for and potential impact of the applicant's proposed projects in improving international studies and the study of modern foreign language at the undergraduate level.

(2) The Secretary looks for information that shows—

(i) The extent to which the applicant's proposed apportionment of Federal funds among the various budget categories for the proposed project will contribute to achieving results;

(ii) The international nature and contemporary relevance of the proposed project;

(iii) The extent to which the proposed project will make an especially significant contribution to the improvement of the teaching of international studies or modern foreign languages at the undergraduate level; and

(iv) The adequacy of the applicant's provisions for sharing the materials and results of the proposed project with the higher education community.

Additional information regarding these criteria is in the application package for this program. The total number of points available under these selection criteria, combined with the competitive preference priorities, is as follows:

Selection criteria	UISFL IHEs	UISFL consortia and partnerships	UISFL public and private nonprofit agencies and organizations, including professional and scholarly associations
(a) Plan of Operation	15	15	15
(b) Quality of Key Personnel	10	10	10
(c) Budget and Cost Effectiveness	10	10	10
(d) Evaluation Plan	20	20	20
(e) Adequacy of Resources	5	5	5
(f) Commitment to International Studies	15	15	n/a
(g) Elements of Proposed International Studies Program	10	10	n/a
(h) Need for and Prospective Results of Proposed Program	15	15	n/a
(i) Need for and Potential Impact of the Proposed Project in Improving International Studies and the Study of Modern Foreign Languages at the Undergraduate Level	n/a	n/a	40
Sub-Total	100	100	100
Competitive Preference Priority #1 (Optional)	3	3	n/a
Competitive Preference Priority #2 (Optional)	2	2	n/a
Total Possible Points	105	105	100

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Separate rank order slates for applications from (1) IHEs, consortia, and partnerships; and (2) public and private nonprofit agencies and

organizations will be developed and used to make funding recommendations. Each slate will include the peer reviewers' scores from the highest score to the lowest score. In cases where two or more applications have the same final score in the rank order listing, but there are insufficient funds to support all equally ranked applications, the applicant who has not received a UISFL award within the last 5 years will be recommended to receive the award to achieve an equitable distribution of grant funds throughout the United States.

In cases where the scores for two or more applications remain tied after using the above tie-breaker, program staff will use the scores assigned for Criterion 8, *Need for and Potential Impact of the Proposed Project for institutional applications;* or the scores assigned for Criterion 10, *Need for and Potential Impact of the Proposed Project in Improving International Studies and the Study of Modern Foreign Languages at the Undergraduate Level for associations and organizations applications.*

The Secretary, to the extent practicable and consistent with the criterion of excellence, seeks to encourage diversity by ensuring that a variety of types of projects and institutions receive funding.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to preexisting works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of preexisting works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Performance reports for the UISFL program must be submitted electronically into the office of International and Foreign Language Education web-based reporting system, International Resource Information System (IRIS). For information about IRIS and to view the reporting instructions, please go to *http://iris.ed.gov/iris/pdfs/UISFL.pdf.*

5. *Performance Measure:* For the purpose of reporting the impact of the UISFL program under 34 CFR 75.110, the Department will use the following

performance measures to evaluate the success of the UISFL program: percentage of UISFL projects that added or enhanced courses in international studies in critical world areas and priority foreign languages; and percentage of UISFL projects that established certificate and/or undergraduate degree programs in international or foreign language studies.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, Braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–05745 Filed 3–20–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0051]

Agency Information Collection Activities; Comment Request; Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form

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 May 22, 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–0051. 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: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form.

OMB Control Number: 1845–0127.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 296.

Total Estimated Number of Annual Burden Hours: 76.

Abstract: This is a request for an extension of Office of Management and Budget (OMB) approval of the Lender's Application for Insurance Claim Form (HEAL 510) and Request for Collection Assistance Form (HEAL 513). Section 525 of the Consolidated Appropriations Act of 2014 transferred the collection of the HEAL Program loans from the U.S. Department of Health and Human Services (HHS) to the U.S. Department of Education (the Department). The information collected on both forms is necessary to protect the financial interests of the Federal Government and to assure proper program administration by the current lenders/holders.

Dated: March 16, 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. 2023–05739 Filed 3–20–23; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Standards Board 2023 Annual Meeting.

DATES: Tuesday, April 18, 2023, 11:00 a.m.–7:00 p.m. Eastern and Wednesday, April 19, 2023, 10:30 a.m.–2:00 p.m. Eastern.

ADDRESSES: Hyatt Regency Phoenix, 122 N 2nd St., Phoenix, AZ 85004.

The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an annual meeting of the EAC Standards Board to conduct regular business, discuss EAC updates and upcoming programs, and discuss the Voluntary Voting System Guidelines (VVSG) 2.0 and electronic poll book pilot program.

Agenda: The U.S. Election Assistance Commission (EAC) Standards Board will hold their 2023 Annual Meeting primarily to conduct an annual review the VVSG 2.0 Requirements and implementation, review the status of the EAC's e-poll book pilot program, discuss ongoing EAC programs, and address election official security and mental health concerns. This meeting will include a question and answer discussion between board members and EAC staff.

Board members will also review FACA Board membership guidelines and policies with EAC Acting General Counsel and receive a general update about the EAC programing. The Board will also elect nine members to the Executive Board Committee.

Background: On February 10, 2021 the U.S. Election Assistance Commission (EAC) announced the adoption of the Voluntary Voting System Guidelines (VVSG) 2.0, the fifth iteration of national level voting system standards. The Federal Election Commission published the first two sets of Federal standards in 1990 and 2002. The EAC then adopted Version 1.0 of the VVSG on December 13, 2005. In an effort to update and improve version 1.0 of the VVSG, on March 31, 2015, the EAC commissioners unanimously approved VVSG 1.1.

HAVA designates a 110-member Standards Board to assist EAC in carrying out its mandates under the law. The board consists of 55 state election officials selected by their respective chief state election official, and 55 local election officials selected through a process supervised by the chief state election official.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This meeting will be open to the public.

Camden Kelliher,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–05899 Filed 3–17–23; 4:15 pm]

BILLING CODE 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 April 20, 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 DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–8585.

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 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.:* 1910–1800.

(2) *Information Collection Request Titled:* Security Information Collections.

(3) *Type of Review:* Renewal.

(4) *Purpose:* The purpose of this collection is to protect national security and other critical assets entrusted to the Department. Information collected is for (1) foreign ownership, control or influence data from bidders on DOE contracts requiring personnel security clearances; and (2) individuals in the process of applying for a security clearance/access authorization or who already holds one. The collections instruments are: DOE Form 5631.18, Security Acknowledgement; DOE Form 5631.20, Request for Visitor Access Approval; DOE Form 5631.29, Security Termination Statement; DOE F 5631.34, Data Report on Spouse/Cohabitant; DOE Form 5631.5, The Conduct of Personnel Security Interviews; DOE Form 5639.3 Report of Security Incident/Infraction; DOE F 471.1, Security Incident Notification Report; DOE Form 472.3 Foreign Citizenship Acknowledgement; DOE Form 473.2, Security Badge Request; DOE Form 473.3, U.S. Department of Energy Clearance Access Request; Influence (e-FOCI) System (SF–328 used for entry); DOE Form 272.2, U.S. Department of Energy Personnel Security Information Reporting Form (DOE F 272.2) and the Foreign Access Central Tracking System (FACTS).

(5) *Annual Estimated Number of Respondents:* 100,661.

(6) *Annual Estimated Number of Total Responses:* 109,621.

(7) *Annual Estimated Number of Burden Hours:* 25,751.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $2,317,590.

Statutory Authority: Section 641 of the Department of Energy Organization Act, codified at 42 U.S.C. 7251, and the following additional authorities:

DOE Form 5631.34, Data Report on Spouse/Cohabitant: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 12968 (August 2, 1995); Executive Order 10865 (February 20, 1960); Executive Order 10450 (April 27, 1953); DOE Order 472.2 (July 21, 2011).

Security Incident Notification Report and Report of Preliminary Security Incident/Infraction (DOE Form 471.1 and DOE Form 5639.3): Executive Order 13526 (December 29, 2009); 32 CFR part 2001; DOE Order 470.4B (July 21, 2011).

DOE Form 5631.20, Request for Visitor Access Approval: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165.

DOE Form 5631.18, Security Acknowledgement: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 13526 (December 29, 2009); Executive Order 10865 (Feb. 20, 1960); Executive Order 10450 (April 27, 1953); DOE Order 5631.2C (February 17, 1994).

DOE Form 5631.29, Security Termination Statement: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 13526 (December 29, 2009); Executive Order 10865 (Feb. 20, 1960); Executive Order 10450 (Apr. 27, 1953); 32 CFR part 2001; DOE O 472.2 (July 21, 2011).

DOE Form 5631.5, The Conduct of Personnel Security Interviews: 10 CFR part 710; Executive Order 12968 (Aug. 2, 1995); Executive Order 10450 (April 27, 1953); DOE Order 472.2 (July 21, 2011).

DOE Form 473.3, U.S. Department of Energy Clearance Access Request; DOE Form 471.1, Security Incident Notification Report; DOE Form 472.3 Foreign Citizenship Acknowledgement; and DOE Form 473.2, Security Badge Request; the Atomic Energy Act of 1954, as amended, and by Executive Orders 13764, 10865, and 13526.

Electronic Foreign Ownership, Control or Influence (e-FOCI) System: Executive Order 12829 (January 6, 1993); DOE Order 470.4B (July 21, 2011).

Foreign Access Central Tracking System (FACTS): Presidential Decision Directive 61 (February 1999); DOE Order 142.3A (October 14, 2010).

Signing Authority

This document of the Department of Energy was signed on March 15, 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 March 16, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–05735 Filed 3–20–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information: Puerto Rico Energy Resilience Fund

AGENCY: Grid Deployment Office (GDO), Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE or the Department) is providing notification of the issuance of a Request for Information (RFI) on the Puerto Rico Energy Resilience Fund authorized by the Consolidated Appropriations Act, 2023. The RFI is seeking input on the Department's program design, specifically qualifying beneficiary criteria, technologies, and deployment priorities. DOE expects to release one or more competitive solicitations in the areas of technology deployment and community engagement, education, and workforce development. Information collected from this RFI will be used by DOE for program planning purposes and the potential development of one or more funding opportunities.

DATES: Responses to this RFI must be received by 5:00 p.m. ET on April 21, 2023.

ADDRESSES: Interested parties may submit comments electronically to *PuertoRicoGDO@hq.doe.gov.* For information relating to the Puerto Rico Energy Resilience Fund, including a copy of the RFI, please see *https://www.energy.gov/gdo/puerto-rico-energy-resilience-fund.*

Instructions: Responses must be provided as attachment(s) to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx) attachment to the email, no more than 20 pages in length, 12-point font, 1-inch margins. Please identify your answers by responding to a specific question or topic. Respondents may answer as many or as few questions as they wish.

FOR FURTHER INFORMATION CONTACT: For more information regarding the RFI, please contact Eric Britton, (240)–364–4719, *PuertoRicoGDO@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Appropriations Act, Public Law 117–328, authorizes $1 billion to the Secretary of Energy to carry out activities to improve the resilience of the Puerto Rican electric grid, including grants for low- and moderate-income households and households that include individuals with disabilities for the purchase and installation of renewable energy, energy storage, and other grid technologies. DOE expects to release one or more competitive solicitations in the areas of technology deployment and community engagement, education, and workforce development. The RFI describes the program design and seeks public input on:

1. Technology & Engineering
2. Beneficiary & Community Considerations
3. Financial Assistance
4. Technical Assistance, Capacity Building, and Workforce Development; and
5. Monitoring, Evaluation, Auditing

The RFI is available in English: *https://www.energy.gov/sites/default/files/2023-02/Puerto%20Rico%20Energy%20Resilience%20Fund%20RFI%20-%2002.21.23_0.pdf.* The RFI is available in Spanish: *https://www.energy.gov/sites/default/files/2023-02/Fondo%20de%20Resiliencia%20Energ%C3%A9tica%20RFI%20-%2002.21.23lowbar;0.pdf.* For information relating to the Puerto Rico Energy Resilience Fund, including a copy of the RFI, please see *https://www.energy.gov/gdo/puerto-rico-energy-resilience-fund.*

Proprietary and Confidential Information

Because information received in response to this RFI may be used to structure future programs and grants and/or otherwise be made available to the public, respondents are strongly

advised NOT to include any information in their responses that might be considered business sensitive, proprietary, or otherwise confidential. If, however, a respondent chooses to submit business sensitive, proprietary, or otherwise confidential information, it must be clearly and conspicuously marked as such in the response. Responses containing confidential, proprietary, or privileged information must be conspicuously marked as described below. Failure to comply with these marking requirements may result in the disclosure of the unmarked information under the Freedom of Information Act or otherwise. The U.S. Federal Government is not liable for the disclosure or use of unmarked information and may use or disclose such information for any purpose.

If your response contains confidential, proprietary, or privileged information, you must include a cover sheet marked as follows identifying the specific pages containing confidential, proprietary, or privileged information:

Notice of Restriction on Disclosure and Use of Data: Pages [List Applicable Pages] of this response may contain confidential, proprietary, or privileged information that is exempt from public disclosure. Such information shall be used or disclosed only for the purposes described in this RFI. The Government may use or disclose any information that is not appropriately marked or otherwise restricted, regardless of source.

Signing Authority

This document of the Department of Energy was signed on March 15, 2023, by Maria D. Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of 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 March 16, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–05737 Filed 3–20–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1893–083]

CRP NH Garvin Falls, LLC, CRP NH Hooksett, LLC, CRP NH Amoskeag, LLC; Notice of Effectiveness of Withdrawal of Application for Amendment of License

On September 27, 2022, CRP NH Garvin Falls, LLC; CRP NH Hooksett, LLC; and CRP NH Amoskeag, LLC (licensees) filed an application for amendment of license for the 29.9-megawatt Merrimack River Hydroelectric Project No. 1893. On February 23, 2023, the licensees filed a request to withdraw their application.

No motion in opposition to the request for withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,[1] the withdrawal of the application became effective on March 10, 2023, and this proceeding is hereby terminated.

Dated: March 14, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05660 Filed 3–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–572–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 3.15.23 Negotiated Rates—Macquarie Energy LLC R–4090–29 to be effective 4/1/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5009.

Comment Date: 5 p.m. ET 3/27/23.

Docket Numbers: RP23–573–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 3.15.23 Negotiated Rates—Mercuria Energy America, LLC R–7540–24 to be effective 4/1/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5010.

Comment Date: 5 p.m. ET 3/27/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05778 Filed 3–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1319–000]

Baldy Mesa Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Baldy Mesa Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 4, 2023.

[1] 18 CFR 385.216(b) (2021).

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05779 Filed 3–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP20–55–000	3–1–2023	FERC Staff.[1]
2. CP20–55–000	3–1–2023	FERC Staff.[2]
3. CP20–55–000	3–1–2023	FERC Staff.[3]
4. CP20–55–000	3–1–2023	FERC Staff.[4]
5. CP20–55–000	3–3–2023	FERC Staff.[5]
6. CP20–55–000	3–7–2023	FERC Staff.[6]
7. CP20–55–000	3–7–2023	FERC Staff.[7]
8. CP20–55–000	3–7–2023	FERC Staff.[8]
9. CP20–55–000	3–7–2023	FERC Staff.[9]
10. CP20–55–000	3–7–2023	FERC Staff.[10]
11. CP20–55–000	3–7–2023	FERC Staff.[11]
12. CP20–55–000	3–7–2023	FERC Staff.[12]
13. CP20–55–000	3–7–2023	FERC Staff.[13]
14. CP20–55–000	3–7–2023	FERC Staff.[14]
15. CP20–55–000	3–7–2023	FERC Staff.[15]
16. CP20–55–000	3–7–2023	FERC Staff.[16]
17. CP20–55–000	3–13–2023	FERC Staff.[17]
18. CP20–55–000	3–13–2023	FERC Staff.[18]
19. CP20–55–000	3–13–2023	FERC Staff.[19]
20. CP20–55–000	3–13–2023	FERC Staff.[20]
21. CP20–55–000	3–13–2023	FERC Staff.[21]
22. CP20–55–000	3–13–2023	FERC Staff.[22]
23. CP20–55–000	3–13–2023	FERC Staff.[23]
24. CP20–55–000	3–13–2023	FERC Staff.[24]
25. CP20–55–000	3–13–2023	FERC Staff.[25]
26. CP20–55–000	3–13–2023	FERC Staff.[26]

Docket Nos.	File date	Presenter or requester
27. CP20–55–000	3–13–2023	FERC Staff.[27]
28. CP20–55–000	3–13–2023	FERC Staff.[28]
29. CP20–55–000	3–13–2023	FERC Staff.[29]
30. CP20–55–000	3–13–2023	FERC Staff.[30]
31. CP20–55–000	3–13–2023	FERC Staff.[31]
32. CP20–55–000	3–13–2023	FERC Staff.[32]
33. CP20–55–000	3–13–2023	FERC Staff.[33]
34. CP16–454–000	3–15–2023	FERC Staff.[34]
Exempt:		
1. CP22–21–000, CP22–22–000	3–6–2023	Louisiana House of Representative Clay Higgins.
2. CP17–40–000	3–7–2023	U.S. Senator Tammy Duckworth.
3. CP22–2–000	3–13–2023	Washington State Governor Jay Inslee.
4. CP16–454–000	3–15–2023	Cameron County Texas Judge Eddie Trevino, Jr.

[1] Email comments dated 2/27/23 from Jennifer Ho.
[2] Email comments dated 2/27/23 from Thomas Coleman.
[3] Email comments dated 2/28/23 from Rachel Kosarin.
[4] Email comments dated 2/28/23 from Keith Olcott.
[5] Email comments dated 3/2/23 from Robby Roberts.
[6] Email comments dated 3/3/23 from Dara Olmsted Silverstein.
[7] Email comments dated 3/3/23 from Lynn Weller.
[8] Email comments dated 3/3/23 from Nikki Alvarado.
[9] Email comments dated 3/4/23 from Jennifer Aminzade.
[10] Email comments dated 3/4/23 from Staci Edwards.
[11] Email comments dated 3/4/23 from Liz Peltekian.
[12] Email comments dated 3/5/23 from Dora Nomamiukor.
[13] Email comments dated 3/5/23 from Jamie Usrey.
[14] Email comments dated 3/6/23 from Elaine Salinger.
[15] Email comments dated 3/6/23 from Lucinda Young.
[16] Email comments dated 3/7/23 from Mary Ruth Gross.
[17] Email comments dated 3/8/23 from Ari Thomas.
[18] Email comments dated 3/10/23 from William Niemand.
[19] Email comments dated 3/12/23 from Cassie Bowler Dupras.
[20] Email comments dated 3/7/23 from Daylan Forguson.
[21] Email comments dated 3/13/23 from Diane Gleave.
[22] Email comments dated 3/8/23 from Ginger Vollmar.
[23] Email comments dated 3/9/23 from Jacquie Hilterman.
[24] Email comments dated 3/7/23 from Julia Hudson.
[25] Email comments dated 3/13/23 from Karen Daiter.
[26] Email comments dated 3/8/23 from Kathleen Watson.
[27] Email comments dated 3/13/23 from Kent Kasper.
[28] Email comments dated 3/8/23 from Leslie Alden.
[29] Email comments dated 3/9/23 from Mary Ann Osborne.
[30] Email comments dated 3/9/23 from Robin Weller.
[31] Email comments dated 3/13/23 from Susan Baum.
[32] Email comments dated 3/13/23 from Suzie Ross.
[33] Email comments dated 3/7/23 from Todd Weber.
[34] Email comments dated 3/13/23 from Eduardo A Campirano.

Dated: March 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05780 Filed 3–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–87–000]

WBI Energy Transmission, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on March 7, 2023, WBI Energy Transmission, Inc. (WBI Energy), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed a prior notice request for authorization, in accordance with 18 CFR 157.205, 157.208, 157.210, 157.211 and 157.216 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act and WBI Energy's blanket certificate issued in Docket No. CP82–487–000, to construct, uprate, modify, operate and abandon natural gas facilities in Butte, Lawrence, Meade and Pennington Counties, South Dakota (Project).

WBI Energy's states its Project is designed to provide up to 25,000 dekatherms per day for its customers Montana-Dakota Utilities Co. (Montana-Dakota) and Black Hills Service Company, LLC, as shown in Table 1 of WBI Energy's application.[1] WBI Energy proposes to: (1) uprate 23 miles of the Yellow Mainline from a Maximum Allowable Operating Pressure (MAOP) of 470 pounds per square inch gauge (psig) to an MAOP of 1,017 psig commencing from the Belle Fourche Compressor Station, located in Butte County, South Dakota and ending at the proposed Deadwood Mainline Transfer Station to be constructed in Lawrence County, South Dakota; (2) install a second stage compressor unit (Unit 8) and associated equipment facilities at its existing Belle Fourche Compressor Station; (3) extend the existing Yellow and Red Mainlines 500 feet southwest from the current Krebs Station in Pennington County, South Dakota; (4) construct 6.6 miles of new 8-inch-diameter lateral pipeline in Lawrence County, South Dakota; and (4) replace and construct town border stations and valve settings as detailed in Table 2 of WBI Energy's application.[2]

Additionally, WBI Energy proposes to abandon in place 6.6 miles of 4-inch-diameter lateral pipeline in Lawrence County, South Dakota, abandon by removal multiple meter stations in Meade County, South Dakota, and

[1] Application at 5.

[2] Application at 8–11.

abandon by sale to Montana-Dakota four existing station outlet valves at the Krebs Station located in Pennington, South Dakota. WBI Energy also proposes to perform work on associated auxiliary facilities under Section 2.55(a) of the Commissions regulations as detailed in Table 3 of WBI Energy's application.[3] WBI Energy states that the cost of the Project will be $33,800,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503, at (701) 530–1563 or *lori.myerchin@wbienergy.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[4] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on May 15, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[5] any person [6] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[7] and must be submitted by the protest deadline, which is May 15, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [8] and the regulations under the NGA [9] by the intervention deadline for the project, which is May 15, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 15, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–87–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then

[3] Application at 11.

[4] 18 CFR (Code of Federal Regulations) § 157.9.

[5] 18 CFR 157.205.

[6] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[7] 18 CFR 157.205(e).

[8] 18 CFR 385.214.

[9] 18 CFR 157.10.

select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [10]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–87–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Lori Myerchin, Director, Regulatory Affairs and Transportation Services, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503, at (701) 530–1563 or *lori.myerchin@wbienergy.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

[10] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Dated: March 14, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–05661 Filed 3–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–709–004.

Applicants: Missouri Joint Municipal Electric Utility Commission, Southwest Power Pool, Inc.

Description: Compliance filing: Missouri Joint Municipal Electric Utility Commission submits tariff filing per 35: Settlement Compliance Filing of MJMEUC in Response to February 16 Order to be effective 6/1/2022.

Filed Date: 3/15/23.

Accession Number: 20230315–5037.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1349–000.

Applicants: Northern States Power Company, a Wisconsin corporation, Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: Northern States Power Company, a Wisconsin corporation submits tariff filing per 35.13(a)(2)(iii: 2023 Interchange Agreement Annual Filing to be effective 1/1/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5024.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1350–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Services Company.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2023–03–15_SA 4006 Ameren Missouri-Hannibal Wholesale Connection Agreement to be effective 5/15/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5029.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1351–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–03–15_SA 3482 ATC-Wisconsin Electric Power 2nd Rev GIA (J878 J1316) to be effective 3/8/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5034.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1357–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 27 to be effective 5/15/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5047.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1358–000.

Applicants: AmeriPro Energy Corp.

Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 5/14/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5048.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1361–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Add Enhanced Language to Attachment V (RR 523) to be effective 5/15/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5052.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1362–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ISA, SA No. 6821; Queue No. AF1–040 to be effective 2/16/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5056.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1363–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6822; Queue No. AF1–328 to be effective 2/28/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5059.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1364–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 26 to be effective 5/15/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5061.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1366–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 21 to be effective 5/15/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5068.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1371–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6819; Queue No. AC1–188 to be effective 2/15/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5092.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1372–000.

Applicants: Gaucho Solar LLC.

Description: Baseline eTariff Filing: Reactive Power Tariff Application to be effective 5/1/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5100.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1373–000.

Applicants: Hillcrest Solar I, LLC.

Description: § 205(d) Rate Filing: Normal filing 2023 to be effective 3/16/2023.

Filed Date: 3/15/23.

Accession Number: 20230315–5104.

Comment Date: 5 p.m. ET 4/5/23.

Docket Numbers: ER23–1374–000.

Applicants: Massachusetts Electric Company.

Description: § 205(d) Rate Filing: 2022 Rate Update Filing for Massachusetts Electric Borderline Sales Agreement to be effective 1/1/2022.

Filed Date: 3/15/23.

Accession Number: 20230315–5107.

Comment Date: 5 p.m. ET 4/5/23.

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: March 15, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–05777 Filed 3–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Notice of Final 2025 Olmsted Power Marketing Plan

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final 2025 Olmsted Power Marketing Plan.

SUMMARY: Western Area Power Administration (WAPA), a Federal Power Marketing Administration of the Department of Energy (DOE), announces its Final 2025 Olmsted Power Marketing Plan (Marketing Plan) for the Colorado River Storage Project (CRSP) Management Center (MC). On September 30, 2024, all of Olmsted Power Plant Replacement Project (Olmsted Project) energy sales contracts (Contracts) will expire. This notice responds to comments received on the Proposed 2025 Olmsted Power Marketing Plan (Proposed Plan) published in the **Federal Register** June 1, 2022, and sets forth the Marketing Plan. The Marketing Plan specifies the terms and conditions under which WAPA will market energy from the Olmsted Project beginning October 1, 2024, through September 30, 2054. This Marketing Plan supersedes the previous Olmsted Project marketing plan. WAPA will offer new Contracts for the sale of energy to existing customers (Customers) as more fully described in the Marketing Plan. The Marketing Plan also establishes one resource pool (2034 Resource Pool) of up to 3 percent of the marketable resource under contract at the time of reallocation to be available for eligible new preference entities or Customers. The 2034 Resource Pool will be under Contract by October 1, 2034. WAPA will publish the application procedures for the 2034 Resource Pool in a separate **Federal Register** notice.

DATES: The Marketing Plan will become applicable April 20, 2023 in order to make power allocations and complete the other processes necessary to begin providing services on October 1, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney G. Bailey, CRSP Manager, CRSP MC, Western Area Power Administration, 1800 South Rio Grande Avenue, Montrose, CO 81401, by email at *Olmsted-Marketing@wapa.gov,* by telephone at 970–252–3000, or by fax at 970–240–6282. Information on development of the Marketing Plan can be found at *https://www.wapa.gov/regions/CRSP/PowerMarketing/Pages/power-marketing.aspx.*

SUPPLEMENTARY INFORMATION:

Background

The Olmsted Project is located at the mouth of Provo Canyon in northern Utah and is part of the Central Utah Project, a participating project of CRSP. In 1987, the United States Department of the Interior, Bureau of Reclamation (Reclamation) secured ownership of the Olmsted Flowline, located in northern Utah, from PacifiCorp (formerly known as Utah Power and Light), and the associated water rights as an essential part of the Central Utah Project. In a related 1990 Settlement Agreement, the Olmsted generation facilities were acquired in condemnation proceedings by the United States to better secure and develop water rights for the Central Utah Project. As part of the condemnation proceedings, PacifiCorp continued generating power at Olmsted until September 22, 2015. Power generation at the site ceased on that date, and Reclamation assumed responsibility for operating the Olmsted Project.

A comprehensive evaluation of the existing 100-year-old Olmsted facilities determined it had greatly exceeded its operational life, and a replacement hydroelectric facility was necessary. On February 4, 2015, an Implementation Agreement (Agreement) for the Olmsted Project was signed by the Central Utah Water Conservancy District (District), Reclamation, DOE, and WAPA (Participants) to set forth the responsibilities of the participants and how the Olmsted Project would be funded. During the second quarter of calendar year 2016, pursuant to the Agreement, the District began constructing the 12-megawatt, $42 million replacement hydroelectric facility and new power transmission line to the nearby Provo Power system. Olmsted Powerplant construction was completed in July 2018 and started commercial power production in October 2018. The Olmsted Project is a Federal facility operated and maintained by the District in connection with its Central Utah Project operations. The Olmsted Project is a ''run-of-the-river'' plant producing power only when water demands from downstream users necessitate water deliveries.

The Marketing Plan, herein, describes how CRSP Management Center will market Federal energy from the Olmsted Project beginning October 1, 2024, through September 30, 2054. As part of the Marketing Plan, WAPA will establish one 2034 Resource Pool of 3 percent of the net marketable resource (minus the District's allocation) under contract at the time of each reallocation to be available for eligible new

preference entities and Customers. The 2034 Resource Pool will be allocated and under contract by October 1, 2034. WAPA will publish the application procedures for the 2034 Resource Pool in a separate **Federal Register** notice sometime in the 2030 calendar year timeframe. WAPA, at its discretion, will allocate a percentage of the 2034 Resource Pool to selected new applicant(s) that meet the Eligibility Criteria defined in the Marketing Plan, herein. This allocation percentage will be multiplied by the 2034 Resource Pool percentage to determine an applicant's percentage of the resource pool. WAPA will publish a notice in the **Federal Register** once those proposed allocations have been determined (Proposed Allocations). The public will have an opportunity to comment on the Proposed Allocations. After reviewing the comments, WAPA will publish a notice of Proposed Allocations in the **Federal Register**. Once the final 2034 Resource Pool allocations have been published, WAPA will work with Customers to amend the existing Contracts and execute Contracts with any new allottees pursuant to the General Contract Principles as described in this notice.

Response to Comments on the Proposed 2025 Olmsted Power Marketing Plan

During the public consultation and comment period, WAPA received four letters commenting on the Proposed Plan. In addition, WAPA received two comments during the June 28, 2022, Public Comment Forum. In preparing the Marketing Plan, WAPA reviewed and considered all comments received during the public consultation and comment period. The following is a summary of the comments received during the consultation and comment period, and WAPA's responses to those comments. Comments are grouped by subject and paraphrased for brevity when it was possible to do so without affecting the meaning of the statements.

A. Marketing Area Responses

Comment: One commenter stated the District will likely operate features within both the Provo River Delta Restoration Project (PRDRP) and the June Sucker Recovery Implementation Program (JSRIP). The features will make up part of the growing new loads in operations for which the District is responsible (see agreement dated November 24, 2020 between the District and the Utah Reclamation Mitigation and Conservation Commission (URMCC) showing current scope of work related to some of these efforts).

Response: WAPA appreciates this comment and acknowledges the broad authorities the District has under Central Utah Project Completion Act (CUPCA). Therefore, if the District is required to serve electrical loads resulting from implementation of CUPCA that are beyond the marketing area boundaries defined in this notice, those loads may be service with Olmsted Project energy as long as the electrical loads are 100 percent CUPCA related.

Comment: One commenter stated that WAPA did include Juab County in the Proposed 2025 Marketing Plan. But the Proposed 2025 Marketing Plan continues to exclude Duchesne and Uintah counties that are also within similar proximity to the Olmsted Project. Furthermore, several counties in the current marketing plan did not and do not contribute significant funding for the Olmsted Project.

Response: During the previous marketing plan public process in 2016, WAPA unintentionally excluded Juab County in the proposed marketing plan **Federal Register** notice (81 FR 87035) published on December 02, 2016, and the final Olmsted Marketing Plan published in the **Federal Register** notice (82 FR 47201) on October 11, 2017. WAPA is correcting that error by including Juab County in the final 2025 Olmsted Power Marketing Plan. However, because of the small amount of energy available from the Olmsted Project, the marketing area will continue to be limited to the Utah counties in the vicinity of the powerplant to ensure that entities receiving an allocation would benefit from the energy while at the same time creating a marketing area sufficiently large enough to ensure wide-spread use of the Federal resource.

Comment: One commenter emphasized the importance of the District in supporting the Olmsted Project by highlighting that the District used property taxes from residents of the 8-county area that contributed almost 50 percent of the funding for construction of the Olmsted Project. The commenter further emphasized that the District is responsible for the long-term operation, maintenance and replacement of the project.

Response: Thank you for this comment. WAPA recognizes the significant contributions of the District and the tax payers in the surrounding 8-county area, and as such the District will continue to receive ''priority'' status for an allocation of power under the Marketing Plan.

Comment: Two commenters stated that WAPA needs to adhere to the basic definition and logic of describing the marketing area as ''close proximity to the Olmsted facility.'' They recommended that the marketing area be defined as the two counties within the Provo River drainage—Utah and Wasatch counties.

Response: Other than adding Juab County to this Marketing Plan, WAPA will not be adding or subtracting any other counties.

Comment: One commenter stated that they acknowledge the benefit of adding Juab County to the Proposed 2025 Marketing Plan. It is a good step in the redrawing the boundary lines by similar proximity to the Olmsted Project.

Response: Thank you for this comment.

B. Resource Extensions and 2034 Resource Pool Allocations Responses

Comment: One commenter stated they appreciate WAPA providing the District with ''priority'' status due to its role in construction, financing, operating, maintaining, and replacing responsibilities with the Olmsted Project.

Response: Thank you for this comment.

Comment: One commenter believed the District's current allocation falls proportionately short of the significant contributions they have made to the Olmsted Project.

Response: WAPA appreciates this comment and plans to continue to give ''priority'' status to the District. Furthermore, WAPA encourages the District to apply for an additional allocation during the 2034 Resource Pool Allocation process.

Comment: Three commenters stated that any loads of facilities directly required by the CUPCA, including those for the ''June Sucker'' fish restoration efforts, be met first from the CRSP Project Use power and not from the Olmsted Project resources. The Commenters cited CUPCA 102–575 and Chapter 5 of the Power Appendix of the October 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit to support this position.

Response: WAPA concurs with these comments. Any power needed for the ''June Sucker'' fish restoration efforts will be provided from CRSP Project Use energy allocations.

Comment: One commenter stated the District is authorized under CUPCA to assist the Utah Reclamation Mitigation and Conservation Commission and the U.S. Department of Interior to plan, design, construct and operate features of the CUP, including significant roles and responsibilities of the PRDRP and the JSRIP.

Response: WAPA appreciates this comment and acknowledges the broad authorities the District has under CUPCA.

Comment: One commenter stated that if WAPA plans to use the Resource Pool from Olmsted instead of CRSP for the electricity needs of the ''June Sucker'' fish, that WAPA should consider increasing their allocation by the entire 5 percent set aside for the Resource Pool.

Response: WAPA has determined that CRSP power will be used for any electricity loads required by the ''June Sucker'' fish restoration efforts.

Comment: Several commenters expressed concerns that current allocations from the Olmsted Project only supply energy to partially meet current loads within their respective service areas. Furthermore, these loads will continue to grow substantially over the next 10-years within the counties covered by the Marketing Plan.

Response: WAPA appreciates these comments and understands the challenges of meeting load-growth with diminishing amounts of power supply. In response to these concerns, WAPA will not change current allocations for Customers over the next 10-years; and thereafter withdraw only 3 percent for the 2034 Resource Pool beginning October 1, 2034.

Comment: One commenter stated they value the Olmsted Project allocation of renewable, clean energy operated by the District. The Contracts with WAPA for Federal power are critical in serving the electric consumers in their power communities.

Response: Thank you for this comment.

Comment: One commenter stated they support WAPA's proposal to provide 95 percent of Olmsted Project available energy to existing Customers; and that the 5 percent set aside (Resource Pool) for new customers will not impact the District (dimmish their current allocation).

Response: WAPA appreciates this comment. WAPA plans to reduce 2034 Resource Pool from 5 percent to 3 percent, which generally aligns with other marketing plans for other WAPA projects and regions.

Comment: One commenter stated the Olmsted Project contracts should be renewed and continued beyond 2024 at the same allocation percentages because they have concerns about any changes to the project or allocations and how that could influence future allocations of Federal energy.

Response: WAPA will extend the Olmsted Project resource to Customers with no changes to existing allocations through September 1, 2034. At which time, all existing contracts will be modified to reflect a 3 percent 2034 Resource Pool for new eligible preference entities and existing Customers.

C. Eligible Applicants Responses

Comment: One commenter stated if new allocations are to be given, they should be to those with significant load growth

Response: WAPA recognizes that meeting load growth is a concern for many utilities. WAPA allocates power to eligible preference entities based on current loads rather than anticipated loads. Further, existing Customers will have an opportunity to apply for a percentage of the 2034 Resource Pool.

D. Preference Entities Responses

Comment: No comments received.
Response: No responses provided.

E. Ready, Willing, and Able Responses

Comment: One commenter stated that based on historical compliance with the terms and conditions of the Contract, they are ready, willing, and able to accept a new allocation of Olmsted Project energy.

Response: Thank you for this comment.

F. Contract Obligations Responses

Comment: No comments received.
Response: No responses provided.

G. Contract Term Responses

Comment: One commenter requested a longer contract term. They believed this will be easier on WAPA and the District for planning and allocating costs for major maintenance work and overhaul repairs.

Response: WAPA appreciates this comment and agrees a longer contract term will be more effective and efficient for everyone. WAPA is lengthening the contract term to a fixed 30-year period.

H. Delivery Point Responses

Comment: No comments received.
Response: No responses provided.

I. Transmission Beyond Delivery Point Responses

Comment: No comments received.
Response: No responses provided.

J. Regional Transmission Organization Responses

Comment: No comments received.
Response: No responses provided.

K. Rates and Payment Responses

Comment: Two commenters stated they support the approach that Customers with an allocation will receive a share of the energy and will annually pay a proportionate share of the Olmsted Project operation, maintenance and replacement expenses as defined in the Project Implementation Agreement No. WS–15–100, dated February 5, 2015.

Response: At this time, WAPA plans to continue with the same methodology, which may be followed through a separate public process (*https://www.wapa.gov/regions/CRSP/rates/Documents/Olmsted%20WAPA-205%20Customer%20Brochure%20Proposal%20FINAL.pdf*) under Rate Order No. WAPA–205 (*https://www.wapa.gov/regions/CRSP/rates/Pages/rate-order-205.aspx*).

L. General Comments Responses

Comment: Three commenters stated the continued sustainable operation, maintenance, and replacement of the Olmsted Project is critical to maintaining water rights for CUP.

Response: Thank you for this comment.

Comment: One commenter stated they value their long-standing working relationship with WAPA in managing the Olmsted Project facilities and WAPA's efforts to solve challenges associated with drought and meeting the growth for energy in the West.

Response: Thank you for this comment.

Summary of Major Revisions to the Final Marketing Plan From the Proposed Plan

WAPA revised the Marketing Plan, in part, to address comments received during the public consultation and comment period. The revisions are summarized as follows:

- *Marketing Plan Section A:* Marketing Area clarifying language added that allows the District to serve loads that are features of PRDRP and JSRIP beyond the Marketing Area boundary as long as the electrical loads are 100 percent CUPCA related.
- *Marketing Plan Section B:* Resource Extension and 2034 Resource Pool Allocations clarifying language added including inserting ''2034'' into the section title, delaying the Resource Pool until October 1, 2034, decreasing the 2034 Resource Pool from 5 percent to 3 percent, and no Olmsted Project resources will be used as Project Use power for ''June Sucker'' fish restoration efforts required by the Central Utah Project Completion Act.
- Resource Extension and 2034 Resource Pool changed from 5 percent to 3 percent; electrical loads associated with restoration of the ''June Sucker'' fish will be provided energy from CRSP

allocation of Project Use power—no Olmsted Project resources will be used; and additional clarifying language added to this section.

- *Marketing Plan Section F:* Contract Obligations clarifying language added including the addition of language pertaining to decreasing or increasing a Customer's allocation upon 180 days' notice due to a 2034 Resource Pool; new language allowing Net Billing and Bill Crediting at WAPA's discretion.
- *Marketing Plan Section F:* Contract Obligations includes additional clarifying language.
- *Marketing Plan Section G:* Contract Term changed from a 10-year term with two automatic 5-year renewals to a fixed at 30-years for existing customers, October 1, 2024, to September 30, 2054; and 20 years for any new customers resulting from the 2034 Resource Pool, October 1, 2034, to September 30, 2054.
- *Marketing Plan Section J:* Regional Transmission Organization and other organized market activities sentence added ''. . . with the understanding that WAPA holds the unilateral right to ultimately agree or not agree to what those potential mitigation efforts might be and each Customer is ultimately responsible for all transmission costs associated with their allocation.''
- Marketing Plan added three new sections:
  - The addition of Section I: Acronyms and Definitions
  - Added Section III: Changes Due to Drought
  - Added Section IV: Call for 2034 Resource Pool Applications for Power

2025 Olmsted Power Marketing Plan and Marketing Criteria

The Marketing Plan addresses: (1) The available Olmsted Project energy to be marketed after September 30, 2024, which is the termination date for all existing Olmsted Project Contracts; (2) the general terms and conditions under which the energy will be marketed October 1, 2024, through September 30, 2054, to Customers and new allottee(s); (3) criteria to determine who will be eligible to receive allocations from the 2034 Resource Pools.

WAPA will continue a collaborative process in implementing the terms set forth in this Marketing Plan.

Within broad statutory guidelines, WAPA has discretion as to whom and under what terms it will contract for the sale of Federal power, as long as preference is accorded to statutorily defined public bodies. WAPA markets power in a manner that will encourage the most widespread use at the lowest possible rates consistent with sound business principles. All products and services provided under this Marketing Plan will be subject to the operational requirements and constraints of the Olmsted Project, transmission availability, and Federal authorities.

I. Acronyms and Definitions

As used herein, the following acronyms and terms, whether singular or plural, capitalized or not capitalized, shall have the following meanings:

Allocation: An offer from WAPA to sell Federal energy for a certain period of time, which will convert to a right to purchase after execution of a contract.

Allocation Criteria: Criteria used to determine the amount of energy allocated to allottees.

Allottee: A preference entity receiving an allocation.

Base Resource: A percentage of the annual net marketable energy output of the Olmsted Project rather than fixed quantities of energy as determined by WAPA to be available for marketing after meeting any adjustments for operation and maintenance power requirements.

Bill Crediting: Contractual provisions whereby payments due to WAPA by a Customer shall be paid by a Customer to a third party when so directed by WAPA.

CRSP: Colorado River Storage Project is a DOI project designed to oversee the development of water resources in the Upper Colorado River Basin. The project provides hydroelectric power, flood control and water storage for participating states along the upper portion of the Colorado River and its major tributaries.

Contract Principles: Provisions of the Contracts, including WAPA's General Power Contract Provisions.

CRSP Management Center: Is one of five regional offices within WAPA responsible for marketing power from CRSP hydrogeneration facilities, of which the Olmsted Project is a feature.

Customer: An entity with a contract and receiving electric service from the Olmsted Project.

Electric Utility Status: Means a Preference entity that has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from WAPA on a wholesale basis.

Eligibility Criteria: Conditions that must be met to qualify for an allocation.

Energy: Measured in terms of the work it is capable of doing over a period of time; electric energy is usually measured in kilowatt-hours (kWh) or megawatt-hours (MWh).

GPCP: The General Power Contract Provisions are standard terms and conditions included in WAPA's Contracts.

Integrated Resource Plan (IRP): A process and framework within which the costs and benefits of both demand and supply-side resources are evaluated to develop the least total cost mix of utility resource options.

Kilowatt (kW): A unit measuring the rate of production of electricity; 1 kilowatt equals 1,000 watts.

Marketing Area: The counties of Davis, Juab, Morgan, Salt Lake, Summit, Utah, Weber, and Wasatch, within and to the exterior of these county boundaries as established through an administrative or political subdivision of a state Utah.

Marketing Plan: WAPA's final 2025 Power Marketing Plan for the Olmsted Project.

Megawatt (MW): A unit measuring the rate of production of electricity; 1 megawatt equals 1 million watts.

Net Billing: Payments due to WAPA by a customer may be offset against payments due to that customer by WAPA.

Olmsted Project: A 12-megawatt replacement hydroelectricity facility located at the mouth of Provo Canyon in northern Utah, and a power transmission line to the Provo City power system. The Olmsted Project is part of the Central Utah Project—a participating project of CRSP, and is administered under the February 4, 2015, Implementation Agreement signed by the Central Utah Water Conservancy District (District), United States Department of Interior, Bureau of Reclamation (DOI), DOE and WAPA.

Power: Capacity and energy.

Preference: The requirements of Reclamation Law that provide for preference in the sale of Federal power be given to certain entities such as governments (state, Federal and Native American), municipalities and other corporations or agencies, and cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 (See, *e.g.,* Reclamation Project Act of 1939, Section 9(c), 43 U.S.C. 485h(c)). A Native American applicant must be an ''Indian Tribe'' as that term is defined in section 4 of the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. 5304(e)).

Priority Status: Priority Status is a term used with the District in this Marketing Plan to recognize their significant contributions toward constructing, financing, operating, maintaining, and replacing the Olmsted Project. Priority Status protects the

District from an allocation reduction due to the 2034 Resource Pool.

Reclamation Law: Refers to a series of Federal laws with a lineage dating back to the late 1800s. Viewed as a whole, those laws create the framework under which WAPA markets power.

2034 Resource Pool: A pool of energy created from available marketable Olmsted Project power resources allocated to Customers.

WAPA: Western Area Power Administration, United States Department of Energy, a Federal Power Marketing Administration responsible for marketing and transmitting Federal power pursuant to Reclamation Law and DOE Organization Act (42 U.S.C. 7101, *et seq.*).

II. Olmsted Power Marketing Plan, General Criteria and Contract Principles

The following criteria and contract principles apply to all Contracts executed under the Marketing Plan:

A. Marketing Area

As defined in Section I., herein, the Marketing Area includes the counties of Davis, Juab, Morgan, Salt Lake, Summit, Utah, Weber, and Wasatch, within and to the exterior of these county boundaries as established through an administrative or political subdivision of a state Utah. However, the District may serve loads that are features of PRDRP and JSRIP beyond this Marketing Area as long as the electrical loads are 100 percent CUPCA related.

B. Resource Extensions and 2034 Resource Pool Allocations

1. Extension for Existing Customers

Starting October 1, 2024, WAPA will execute new Contracts that provide the net marketable Olmsted Project energy resources to existing Customers through September 30, 2034. If existing Customer(s) surrenders some or all of its allocation prior to October 1, 2024, that percentage of the total Base Resource will be returned to the remaining existing Customers on a *pro rata* basis.

2. 2034 Pool Resources and Amount

The 2034 Resource Pool will be created by reducing existing Customers' allocations by up to 3 percent, with the exception of the District that will not see an allocation reduction in consideration for its role in constructing and operating the Olmsted Project. The annual Resource Pool available from October 1, 2034, through September 30, 2054, is estimated at 517,650 kWh. This is an approximate figure based on the most recent 3-year average of net marketable Olmsted Project generation of 24,650,000 minus the District's 30 percent allocation times 3 percent. Approximately 97 percent of the available net marketable Olmsted Project energy resources will remain with existing Customers.

3. 2034 Resource Pool Allocations

WAPA will, at its discretion, allocate the 2034 Resource Pool to new applicants that meet the Eligibility and Allocation Criteria. WAPA will take into consideration all existing Federal hydropower allocations an applicant is currently receiving when determining each new 2034 Resource Pool allocation. Allocations from the 2034 Resource Pool will be determined through the processes described in this Marketing Plan.

4. 2034 Resource Pool Allocation Criteria

The following Allocation Criteria will apply to all applicants seeking a 2034 Resource Pool Allocation under the Marketing Plan:

a. Allocations will be made in amounts as determined solely by WAPA in the exercise of its discretion under Reclamation Law and considered to be in the best interest of the U.S. Government.

b. Allocations will be based on all existing Federal hydropower allocations an applicant is currently receiving and on the applicant's load during the calendar year prior to the Call for Applications or the amount requested, whichever is less.

c. An allottee will execute a Contract with WAPA and comply with all conditions in that Contract.

d. Eligible Native American applicants will receive consideration for an allocation consistent with this Marketing Plan and 25 U.S.C. 3505.

C. Eligible Applicants

WAPA will apply the following Eligibility Criteria to all applicants seeking a 2034 Resource Pool Allocation under the Marketing Plan:

1. Applicants must meet the preference requirements under Section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)(1)), as amended and supplemented.

2. Applicants must be located within the Marketing Area.

3. Applicants that require energy for their own use must be ready, willing, and able to receive and use Federal energy by October 1, 2034.

4. Applicants that provide retail electric service must be ready, willing, and able to receive and use the Federal energy to provide electric service to their customers, not for resale to others, by October 1, 2034.

5. Applicants must submit an application in response to the Call for 2034 Resource Pool Applications by the specified deadline. WAPA will publish a notice for the Call for 2034 Resource Pool Applications in the **Federal Register** at a future date. WAPA anticipates it will issue the notice sometime around calendar year 2030.

6. Native American applicants must be a Native American tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 5304).

7. WAPA generally will not allocate power to applicants with loads of less than 1 MW; however, allocations to applicants with loads of at least 500 kW may be considered, provided the loads can be aggregated with other allottees' loads to schedule and deliver to a minimum load of 1 MW.

D. Preference Entities

As defined herein, include municipalities, rural electric cooperatives, and political subdivisions including irrigation or other districts, other governmental organizations, nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936, and Federally recognized Native American tribes are all preference entities in accordance with section 9(c) of the Reclamation Project Act of 1939, as amended (43 U.S.C. 485h(c)). A Native American applicant must be an ''Indian Tribe'' as that term is defined in section 4 of the Indian Self Determination and Education Assistance Act, as amended (25 U.S.C. 5304(e)).

E. Ready, Willing, and Able

Eligible applicants must be ready, willing, and able to receive and distribute or consume energy from WAPA by October 1, 2024. ''Ready, willing, and able'' means the applicant has the facilities needed for the receipt of power or has made the necessary arrangements for transmission and/or distribution service, and its power supply contracts with third parties to permit the delivery of WAPA's power.

F. Contract Obligations

Eligible applicants that receive an allocation must execute Contracts within 6 months of receiving a contract offer from WAPA, unless WAPA agrees otherwise in writing. Furthermore, applicants must comply with all terms and conditions stated within that contract, including:

1. Clauses specifying criteria to receive electric service from WAPA.

2. WAPA's standard provisions, policies and procedures for Contracts, Integrated Resource Plans, General Power Contract Provisions, and creditworthiness as determined by WAPA.

3. Clause that allows WAPA to reduce or increase a Customer's allocation percentage, upon 180 days' notice, if WAPA determines that (1) the Customer is not using this power to serve its own loads; (2) the allocation amounts are consistently greater than the Customer's maximum load; or (3) the Customer is allotted a percentage of allocation returned to WAPA from another Customer.

4. Clauses concerning any energy not under Contract may be allocated at any time, at WAPA's sole discretion, or sold as deemed appropriate by WAPA, consistent with Federal law.

5. Clause providing for alternative funding arrangements, including Net Billing, Bill Crediting, Reimbursable Financing, and advance payment.

6. All power supplied by WAPA will be delivered pursuant to a scheduling agreement negotiated between WAPA and the Customers. Terms and conditions are subject to WAPA's final approval.

7. Clause stipulating that Customers will pay for their percentage of the Base Resource, pursuant to the formula rate described in Section K., herein. Customers must pay all applicable rates and charges in the manner and within the time prescribed in the Contract.

G. Contract Term

Contracts shall provide for WAPA to furnish electric service beginning October 1, 2024, through September 30, 2054. 2034 Resource Pool Contracts shall provide for WAPA to furnish electric service beginning October 1, 2034, through September 30, 2054.

H. Delivery Point

The Olmsted Project is electrically interconnected to the City of Provo, Utah, distribution and transmission facilities (Provo System), and delivery of the Olmsted Project allocation to each Customer will be where the 12.47-kV Provo System interconnects at PacifiCorp's Hale Substation.

I. Transmission Beyond Delivery Point

Any transmission beyond the delivery point at Hale Substation is the sole responsibility of each Customer. Eligible applicants that receive an allocation must have the necessary arrangements for transmission and/or distribution service in place by the first effective day of the contract.

J. Regional Transmission Organization

Should PacifiCorp, as the balancing authority operator where the Olmsted Project is interconnected, join a full electricity market (*e.g.,* Regional Transmission Organization and/or an Independent System Operator), and in joining that market create unintended delivery point/point of receipt financial impacts to the Olmsted Project, and/or other unintended financial impacts, such financial impacts will be included as part of the Olmsted Project operation expenses. WAPA will work with the Customers in good faith in an attempt to minimize financial impacts with the understanding that WAPA holds the unilateral right to ultimately agree or not agree to what those potential mitigation efforts might be and each Customer is ultimately responsible for all transmission costs associated with their allocation.

K. Rates and Payment

The Olmsted Project is a ''take all, pay all'' project (*i.e.,* the Olmsted Project annual revenue requirement is not dependent upon the amount of energy available each year). WAPA developed the Olmsted Project Formula Rate F–1, under Rate Order No. WAPA–177, published in the **Federal Register** on May 7, 2018 (83 FR 20065), that determines the annual energy charge to each Customer receiving an allocation. The new rate announced in a **Federal Register** notice published November 10, 2022, is being developed through a separate public process (*https://www.wapa.gov/regions/CRSP/rates/Documents/Olmsted%20WAPA-205%20Customer%20Brochure%20Proposal%20FINAL.pdf*) under Rate Order No. WAPA–205 (*https://www.wapa.gov/regions/CRSP/rates/Pages/rate-order-205.aspx*), which proposed to establish a new effective period of May 1, 2023, through April 30, 2028.

III. Changes Due to Drought

WAPA recognizes here have been, and continue to be, significant impacts caused from a persisting long-term drought in the Colorado River Basin, and changes in the electric utility industry. To address this concern, WAPA, in collaboration with its Customers, will include the ability to make changes in how the Federal resource is marketed if there is deemed a benefit to WAPA and its Customers. Any changes implemented would be done through negotiation and revision to individual Customer Contracts.

IV. Call for 2034 Resource Pool Applications for Power

Qualified preference entities wishing to purchase power from Olmsted Project from October 1, 2034, through September 30, 2054, will have the opportunity to submit a formal application to WAPA prior to October 1, 2034. Existing Customers will not need to submit an application unless they are seeking to increase their allocation. All applicants must submit applications using the Application Profile Data (APD) application form approved by the Office of Management and Budget. The Call for 2034 Resource Pool Applications will be set forth through a separate **Federal Register** notice and public process commencing sometime after calendar year 2030.

Authorities

WAPA developed this Marketing Plan in accordance with its power marketing authorities pursuant to the following Acts of Congress: Reclamation Act of June 17, 1902 (Pub. L. 57–161) (32 Stat. 388), the Reclamation Project Act of August 4, 1939 (Pub. L. 76–260) (53 Stat. 1187), Colorado River Storage Project Act of April 11, 1956 (Pub. L. 84–485) (70 Stat. 105), Department of Energy Organization Act of August 4, 1977 (Pub. L. 95–91) (91 Stat. 565), Energy Policy Act of October 30, 1992 (Pub. L. 102–575) (106 Stat. 4600, 4605), as such acts may have been supplemented or amended.

Procedural Requirements

A. Review Under the National Environmental Policy Act (NEPA)

WAPA has determined that this proposed action fits within the categorical exclusion listed in appendix B to subpart D of 10 CFR part 1021 (B4.1 contracts, policies, and marketing and allocation plans for electric power). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment. A copy of the categorical exclusion determination is available on the CRSP website at: *https://www.wapa.gov/regions/CRSP/environment/Pages/environment.aspx.*

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* requires a Federal agency to perform a regulatory flexibility analysis whenever the agency is required by law to publish a general notice of proposed rulemaking for any proposed rule, unless the agency can certify that the rule will not have a

significant economic impact on a substantial number of small entities. For purposes of the RFA, a ''rule'' does not include ''a rule of particular applicability relating to rates [and] services . . . or to valuations, costs or accounting, or practices relating to such rates [and] services . . .'' 5 U.S.C. 601. WAPA has determined that this action relates to services offered by WAPA and, therefore, is not a rule within the purview of the RFA.

C. Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866. Accordingly, no clearance of this notice by the Office of Management and Budget is required.

D. Review Under Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), WAPA has received approval from the Office of Management and Budget to collect applicant data, under OMB control number 1910–5136.

Signing Authority

This document of the Department of Energy was signed on March 3, 2023, by Tracey A. LeBeau, Administrator, Western Area Power Administration, 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 March 16, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–05736 Filed 3–20–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0116; FRL–9412–15–OCSPP]

Certain New Chemicals or Significant New Uses; Statements of Findings for December 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs), submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from December 1, 2022, to December 31, 2022.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0116, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001; telephone number: (202) 564–1667; email address: *edelstein.rebecca@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action provides information that is directed to the public in general.

B. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the reporting period.

C. What is the Agency's authority for taking this action?

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make one of several specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

The following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as CBI).

- J–22–0019–0020, *Saccharomyces cerevisiae,* chromosomal integration modification (Generic Name).
- J–22–0022–0025, Microorganisms stably transformed to manufacture PHA (Generic Name).
- J–23–0002, Microorganism stably transformed to express a recombinant protein (Generic Name).
- P–22–0017, 1-Eicosanol, manuf. of, distn., residues; CASRN: 2682937–26–2 (Specific Name).

To access EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C), look up the specific case number at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 14, 2023.

Madison Le,

Director, New Chemicals Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–05680 Filed 3–20–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

[File No. 211 0182]

Anchor Glass Container Corporation; 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 Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 20, 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: ''Anchor Glass Non-compete Restrictions; File No. 211 0182'' 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: Kathleen Clair (202–326–3435), 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 Orders 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 April 20, 2023. Write ''Anchor Glass Non-compete Restrictions; File No. 211 0182'' 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.

Because of 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 ''Anchor Glass Non-compete Restrictions; File No. 211 0182'' 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 April 20, 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 has accepted, subject to final approval, a consent agreement with Anchor Glass Container Corporation (''Anchor''), Lynx Finance GP, LLC (''Lynx GP''), and Lynx Finance, L.P. (''Lynx LP'') (collectively, ''Respondents''). Anchor manufactures and sells in the United States glass containers used for food and beverage packaging and employs workers at multiple facilities within the United States for this purpose. Lynx LP is the indirect owner of 100% of the outstanding shares of Anchor, and Lynx GP is the general partner of Lynx LP.

The consent agreement settles charges that Anchor violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, through its use of post-employment covenants not to compete (''Non-Compete Restrictions''). 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 a competing business, to form a competing business, or otherwise to compete with the employer.

The complaint alleges Anchor imposed Non-Compete Restrictions on employees across a variety of positions, including workers whose labor is an important input in the glass container manufacturing process. The complaint alleges this conduct has a tendency or likelihood to limit workers' mobility, to impede rivals' access to the restricted employees' labor, and thus to harm workers, consumers, competition, and the competitive process. As such, the complaint alleges Anchor has engaged in an unfair method of competition in violation of Section 5 of the FTC Act. The proposed order has been placed on the public record for 30 days in order 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 withdraw from the consent agreement and take appropriate action or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint, the consent agreement, or the proposed order, or to modify their terms in any way.

II. The Complaint

The complaint makes the following allegations. The glass containers Anchor manufactures and sells are purchased primarily by companies that sell food, beer, non-alcoholic beverages, and wine and spirits. The glass container industry in the United States is highly concentrated and is characterized by substantial barriers to entry and expansion. Among these barriers, it is difficult to identify and employ personnel with skills and experience in glass container manufacturing.

Anchor has imposed Non-Compete Restrictions on employees across a variety of positions. These restrictions typically required that, for one year following the conclusion of the worker's employment with the Anchor, the worker may not be employed by a competing business in the United States. At the outset of the Commission's investigation, over 300 employees of Anchor were subject to such restrictions, including employees who work with the glass container plants' furnaces and forming equipment and in other glass production, engineering, and quality assurance roles.

The complaint further alleges Anchor's use of the challenged Non-Compete Restrictions has the tendency or likely effect of harming competition, consumers, and workers, including by: (i) impeding the entry and expansion of rivals in the glass container industry, (ii) reducing employee mobility, and (iii) causing lower wages and salaries, reduced benefits, less favorable working conditions, and personal hardship to employees.

III. Legal Analysis

Section 5 of the FTC Act prohibits ''unfair methods of competition.'' [1] Congress empowered the FTC to enforce Section 5's prohibition on ''unfair methods of competition'' to ensure the antitrust laws could adapt to changing circumstances and to address the full range of practices that may undermine competition and the competitive process.[2] The Commission and federal courts have historically interpreted Section 5 to prohibit conduct that is inconsistent with the policies or the spirit of the antitrust laws, even if that conduct would not violate the Sherman or Clayton Acts.[3]

The Commission's recent Section 5 Policy Statement describes the most significant general principles concerning whether conduct is an unfair method of competition.[4] 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.'' [5] A method of competition is ''conduct undertaken by an actor in the marketplace'' that implicates competition, whether directly or indirectly.[6] 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

[1] 15 U.S.C. 45(a).

[2] *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, *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) [hereinafter ''FTC Section 5 Policy Statement (2022)''], at 5 (''Congress struck an intentional balance when it enacted the FTC Act. It allowed the Commission to proceed against a broader range of anticompetitive conduct than can be reached under the Clayton and Sherman Acts, but it did not establish a private right of action under Section 5, and it limited the preclusive effects of the FTC's enforcement actions in private antitrust cases under the Sherman and Clayton Acts.'').

[3] *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 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).

[4] FTC Section 5 Policy Statement (2022), *supra* note 2.

[5] *Id.* at 8–10.

[6] *Id.* at 8.

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, including potential entrants; interfering with the normal mechanisms of competition; limiting choice; reducing output; reducing innovation; or reducing competition between rivals.[7] 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.[8] 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.[9]

In addition, the Commission may consider any asserted justifications for a particular practice.[10] 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.'' [11] 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.[12] 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.[13]

As described below, the factual allegations in the complaint would support concluding that Anchor's use of the challenged Non-Compete Restrictions is an unfair method of competition under Section 5.

First, Anchor's use of Non-Compete Restrictions is a method of competition. The challenged Non-Compete Restrictions are not mere ''condition[s] of the marketplace, not of the respondent's making.'' [14] Rather, these are contract provisions Anchor required its employees to enter into, which, by their terms, restricted the employment options available to affected workers and therefore implicated competition for labor.

Second, Anchor's use of the challenged Non-Compete Restrictions ''goes beyond competition on the merits'' [15] because it is coercive, exploitative, exclusionary, and restrictive as these terms are used in the FTC Section 5 Policy Statement. Non-Compete Restrictions typically result from employers' outsized bargaining power compared to that of employees. And, by reducing workers' negotiating leverage vis-à-vis their current employers, Non-Compete Restrictions tend to impair workers' ability to negotiate for better pay and working conditions.[16] The complaint here also alleges the challenged Non-Compete Restrictions had a tendency or likely effect of impeding the entry and expansion of rivals, as discussed below. As such, they are exclusionary in a manner that violates the spirit and policies of the Sherman Act.[17] Finally, while competition on the merits ''may include, for example . . . attracting employees and workers through the offering of better employment terms,'' [18] Non-Compete Restrictions, by contrast, create a legal impediment that restricts workers from leaving their employment even if they find more attractive employment terms elsewhere. For this reason, Non-Compete Restrictions have long been considered proper subjects for scrutiny under the nation's antitrust laws.[19]

Third, the factual allegations in the complaint support a finding that Anchor's challenged conduct has the tendency or likely effect of negatively affecting competition in the U.S. glass container industry. Specifically, the complaint alleges that (i) Anchor required employees across a variety of positions, including salaried employees who work with the glass container plants' furnace and forming equipment and in other glass production, engineering, and quality assurance roles, to refrain from working for competing glass manufacturing companies for at least one year after the conclusion of their employment, (ii) the ability to identify and employ personnel with skill and experience in glass container manufacturing is a substantial barrier to entry and expansion, and (iii) the challenged restrictions have a tendency or likely effect of impeding the entry and expansion of rivals.

Fourth, the factual allegations in the complaint support a finding that Anchor's challenged conduct has the tendency or likely effect of negatively affecting competitive conditions affecting workers in the U.S. glass container industry. 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.'' [20]

In general, in matching markets, higher-quality matches tend to result when both sides—here, workers and employers—have more options available

[7] *Id.* 8–10.

[8] *Id.* at 9.

[9] *Id.* at 10.

[10] *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.'').

[11] *Id.* at 11.

[12] *Id.*

[13] *Id.* at 11–12.

[14] *See id.* at 8.

[15] *See id.* at 8.

[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.]''). The strength of a worker's negotiating position with their current employer is largely based on the suitability of their next-best alternative employer (*i.e.,* the alternative employer that would offer the employee the best combination of wages and working conditions, net of any switching costs). Competing employers who fall within the scope of a Non-Compete Agreement, typically employers in the same industry and geographic area—are often the strongest competitor to a worker's current employer for that worker's labor. Such employers typically place the highest value on the worker's industry-specific skills, and workers generally face lower switching costs when moving to such employers. *See, e.g.,* David J. Balan, *Labor Non-Compete Agreements: Tool for Economic Efficiency, or Means to Extract Value from Workers?* 15 (2021), *https://equitablegrowth.org/working-papers/labor-non-compete-agreements-tool-for-economic-efficiency-or-means-to-extract-value-from-workers/* (noting workers often ''are barred by the non-compete from [switching to] the[ir] best available alternative jobs'').

[17] *See generally, e.g., ZF Meritor* v. *Easton Corp.,* 696 F.3d 254, 278–79 (3d Cir. 2012); *McWane, Inc.* v. *Fed. Trade Comm'n,* 783 F.3d 814, 835 (11th Cir. 2005); *Tampa Elec. Co.* v. *Nashville Coal Co.,* 365 U.S. 320, 328 (1961); *Geneva Pharms. Tech. Corp.* v. *Barr Labs.,* 386 F.3d 485, 509 (2d Cir. 2004); *see also* FTC Section 5 Policy Statement (2022), *supra* note 2, at 8, 9, 12.

[18] FTC Section 5 Policy Statement (2022), *supra* note 2, at 8–9.

[19] *See, e.g., U.S.* v. *Am. Tobacco Co.,* 221 U.S. 106 (1911); *Newburger, Loeb & Co., Inc.* v. *Gross,* 563 F.2d 1057, 1082 (2d Cir. 1977); *Bradford* v. *N.Y. Times Co.,* 501 F.2d 51 (2d Cir. 1974); *Golden* v. *Kentile Floors, Inc.,* 512 F.2d 838 (5th Cir. 1975); *U.S.* v. *Empire Gas Corp.,* 537 F.2d 296 (8th Cir. 1976); *Aydin Corp.* v. *Loral Corp.,* 718 F.2d 897 (9th Cir. 1983); *Consultants & Designers, Inc.* v. *Bulter Serv. Grp., Inc.,* 720 F.2d 1553 (11th Cir. 1983).

[20] *See generally* David H. Autor, *Wiring the Labor Market*, 15 J. of Econ. Perspectives 25–40 (2001); Enrico Moretti, *Local Labor Markets,* in 4b Handbook of Labor Economics 1237–1313 (2011).

to them.[21] 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.[22]

By preventing workers and employers from freely choosing their preferred jobs and candidates, respectively, Non-Compete Restrictions tend to impede and undermine competition in labor markets.[23] Research suggests Non-Compete Restrictions measurably reduce worker mobility,[24] lower workers' earnings,[25] and increase racial and gender wage gaps.[26] At the individual level, a Non-Compete Restriction can force 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,[27] thereby reducing workers' bargaining leverage with their current employers and resulting in lower wages, slower wage growth, and less favorable working conditions.[28]

Here, the complaint alleges the challenged Non-Compete Restrictions have the tendency or likely effect of reducing employee mobility and causing lower wages and salaries, reduced benefits, less favorable working conditions, and personal hardship to employees.

Finally, as the complaint alleges, any legitimate objectives of Anchor's use of the challenged 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. Indeed, Anchor nullified the challenged Non-Compete Restrictions after learning of the Commission's investigation, apparently without incurring any notable impediment to their ability to achieve any legitimate business objectives.

IV. Proposed Order

The proposed order seeks to remedy the Anchor's unfair methods of competition. Section II of the proposed order prohibits the Respondents from entering or attempting to enter, maintaining or attempting to maintain, or enforcing or attempting to enforce a Non-Compete Restriction with an Employee, or communicating to an Employee or a prospective or current employer of that Employee that the Employee is subject to a Non-Compete Restriction.[29] Paragraph IV.A requires the Respondents to take all steps necessary to void and nullify all existing Non-Compete Restrictions with Employees within 30 days after the date on which the proposed order is issued.[30]

The proposed order also contains provisions designed to ensure compliance. Paragraph III.A of the proposed order requires the Respondents to provide written notice to Employees that have or recently had a Non-Compete Restriction that (i) the restriction is null and void, and (ii) the Employees may, after they stop working for Anchor, seek or accept jobs with any other company or person, run their own businesses, and compete with the Anchor.[31] Paragraph III.B requires Respondents to notify new Employees that they will not be subject to Non-Compete Restrictions by including a specified notice in the documentation provided to new Employees upon hire.[32]

Other paragraphs contain standard provisions regarding compliance reports, notice of changes in Respondents, and access for the FTC to documents and personnel.[33] The proposed order's prohibitions apply only to Respondents' Employees within the United States, and 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, another consent agreement with a company in the glass container industry. 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 against Anchor Glass follows law enforcement actions announced in January 2023 involving two other industry participants, O–I Glass and Ardagh Group.[1] Today's case involves a similar fact pattern and suffers from the same flaws as those earlier cases. For the same reasons that I dissented in those cases,[2] I dissent here.

Like the January 2023 actions, this case reflects the approach of the new Section 5 Policy Statement.[3] It alleges

[21] *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.

[22] *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).

[23] *See, e.g.,* Dep't of the Treasury, Report, *The State of Labor Market Competition, supra* note 21, at 5–7.

[24] 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).

[25] Michael Lipsitz & Evan Starr, *Low-Wage Workers and the Enforceability of Noncompete Agreements,* 68 Mgmt. Sci. 143, 144 (2021); Johnson, Lavetti, & Lipsitz, *supra* note 24.

[26] Johnson, Lavetti, & Lipsitz, *supra* note 24.

[27] *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.*

[28] *See, e.g.,* Johnson, Lavetti, & Lipsitz, *supra* note 24; David J. Balan, *Labor Practices Can be an Antitrust Problem Even When Labor Markets are Competitive,* CPI Antitrust Chronicle (May 2020) at 8.

[29] *See* Decision & Order ¶ II.

[30] *Id.* ¶ IV.A.

[31] *Id.* ¶ III.A; App'x B.

[32] *Id.* ¶ III.B.

[33] *Id.* ¶¶ IV–VII.

[34] *Id.* ¶ IX.

[1] *See* In the Matter of O–I Glass, Inc., FTC File No. 211–0182 (Jan. 4, 2023), *https://www.ftc.gov/system/files/ftc_gov/pdf/2110182o-iglasscomplaint.pdf;* In the Matter of Ardagh Group S.A., FTC File No. 211–0182, *https://www.ftc.gov/system/files/ftc_gov/pdf/2110182ardagh complaint.pdf.*

[2] Dissenting Statement of Commissioner Christine S. Wilson, In the Matter of O–I Glass, Inc. and In the Matter of Ardagh Group S.A., FTC File No. 211–0182 (Jan. 4, 2023), *https://www.ftc.gov/system/files/ftc_gov/pdf/wilsondissenting-statement-glass-container-cases.pdf.*

[3] 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/*

that the use of non-compete agreements has a tendency to harm competition and workers, but fails to provide facts to support the hypothesized outcome. Similar to the Commission's complaints against O–I Glass and Ardagh Group, the complaint against Anchor Glass suffers from several omissions. It does not allege that the company's non-compete provisions are unreasonable based on their temporal length, subject matter, or geographic scope; neither does it allege that the non-compete clauses were enforced. The complaint does not make factual allegations regarding the inability of a competing rival in the glass container industry to enter or expand. While the complaint alleges that the non-compete clauses reduce employee mobility, thereby leading to lower wages, reduced benefits, and less favorable working conditions, the complaint does not identify a relevant market for particular types of labor and fails to allege a market effect on wages or other terms of employment.

For the reasons outlined here and explained in detail in my January 2023 statement, I dissent.

[FR Doc. 2023–05701 Filed 3–20–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0044]

CDC Recommendations for Hepatitis B Screening and Testing—United States, 2022

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), announces the availability of the final *CDC Recommendations for Hepatitis B Screening and Testing—United States, 2022*.

DATES: The final document was published as an *MMWR Reports & Recommendations* on March 10, 2023.

ADDRESSES: The document may be found in the docket at *www.regulations.gov,* Docket No. CDC–2022–0044 and at *https://www.cdc.gov/mmwr/volumes/72/rr/rr7201a1.htm?s_cid=rr7201a1_w.*

FOR FURTHER INFORMATION CONTACT: Erin Conners, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop U12–3, Atlanta, GA 30329. Telephone: 404–639–8000; Email: *DVHpolicy@cdc.gov.*

SUPPLEMENTARY INFORMATION: In 2022, CDC determined that *CDC Recommendations for Hepatitis B Screening and Testing—United States, 2022* constituted influential scientific information (ISI) that will have a clear and substantial impact on important public policies and private sector decisions. Under the Information Quality Act, Public Law 106–554, federal agencies are required to conduct peer review of the information by specialists in the field who were not involved in the development of these recommendations. CDC solicited nominations for reviewers from the American Association for the Study of Liver Diseases (AASLD), Infectious Diseases Society of America (IDSA) and American College of Physicians (ACP). Five clinicians with expertise in hepatology, gastroenterology, internal medicine, infectious diseases, and/or pediatrics provided structured peer reviews. A list of peer reviewers and CDC's responses to peer review comments are available at CDC's Viral Hepatitis Influential Scientific Information web page at *https://www.cdc.gov/hepatitis/policy/isireview/index.htm.*

In addition, on April 4, 2022, CDC published a notice in the **Federal Register** (87 FR 19516–19517) to obtain public comment on the draft recommendations for hepatitis B screening and testing. The comment period closed on June 3, 2022. CDC received comments from 28 commenters on the draft recommendations document. Public commenters included those from academia, the health care sector, advocacy groups, professional organizations, industry, the public, and a consulting group.

Many of the comments expressed support for the recommendations. Other comments related to the 3-panel test recommendation, inclusion of hepatitis D information, the hepatitis B prevalence estimate, modifying testing and vaccination language, adding scientific references, and making other minor language modifications. CDC addressed these comments by correcting, clarifying, or updating content in the final recommendations. A summary of public comments and CDC's response can be found in the Documents tab of the docket.

Tiffany Brown,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2023–05715 Filed 3–20–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3434–FN]

Medicare and Medicaid Programs: Application From the Accreditation Commission for Health Care, Inc. for Continued Approval of Its End-Stage Renal Disease (ESRD) Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This final notice announces our decision to approve the Accreditation Commission for Health Care, Inc for continued recognition as a national accrediting organization for end stage renal disease facilities that wish to participate in the Medicare or Medicaid programs.

DATES: The decision announced in this final notice is applicable on April 11, 2023 through April 10, 2029.

FOR FURTHER INFORMATION CONTACT:
Joy Webb, (410) 786–1667.
Caecilia Blondiaux, (410) 786–2190.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from an end stage renal disease (ESRD) facility provided certain requirements are met. Section 1881(b) of the Social Security Act (the Act), establishes distinct criteria for facilities seeking designation as an ESRD facility. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 494 specify the minimum conditions that an ESRD facility must meet to participate in the Medicare program.

Generally, to enter into an agreement, an ESRD facility must first be certified by a state survey agency (SA) as complying with the conditions or requirements set forth in part 494 of our

ftc_gov/pdf/p221202sec5enforcementpolicystatement_002.pdf; Christine S. Wilson, 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.*

regulations. Thereafter, the ESRD facility is subject to regular surveys by a SA to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS)-approved national accrediting organization (AO) that all applicable Medicare requirements are met or exceeded, we will deem those provider entities as having met such requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at §§ 488.4, 488.5 and 488.5(e)(2)(i). The regulations at § 488.5(e)(2)(i) require AOs to reapply for continued approval of its accreditation program every 6 years or sooner, as determined by CMS.

ACHC's current term of approval for their ESRD facility accreditation program expires April 11, 2023.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

On October 4, 2022, we published a proposed notice in the **Federal Register** (87 FR 60171), announcing ACHC's request for continued approval of its Medicare ESRD facility accreditation program. In the October 4, 2022 proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of ACHC's Medicare ESRD facility accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- A virtual onsite administrative review of ACHC's: (1) corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its ESRD surveyors; (4) ability to investigate and respond appropriately to complaints against accredited ESRD facilities; and (5) survey review and decision-making process for accreditation.
- The comparison of ACHC's Medicare ESRD facility accreditation program standards to our current Medicare ESRD facility conditions of participation (CoPs).
- A documentation review of ACHC's survey process to do the following:

++ Determine the composition of the survey team, surveyor qualifications, and ACHC's ability to provide continuing surveyor training.

++ Compare ACHC's processes to those we require of state survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against ACHC accredited ESRD facilities.

++ Evaluate ACHC's procedures for monitoring accredited ESRD facilities it has found to be out of compliance with ACHC's program requirements. (This pertains only to monitoring procedures when ACHC identifies non-compliance. If noncompliance is identified by a SA through a validation survey, the SA monitors corrections as specified at § 488.9(c)).

++ Assess ACHC's ability to report deficiencies to the surveyed ESRD facilities and respond to the ESRD facilities' plans of correction in a timely manner.

++ Establish ACHC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of ACHC's staff and other resources.

++ Confirm ACHC's ability to provide adequate funding for performing required surveys.

++ Confirm ACHC's policies with respect to surveys being unannounced.

++ Confirm ACHC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ Obtain ACHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

IV. Analysis of and Responses to Public Comments on the Proposed Notice

In accordance with section 1865(a)(3)(A) of the Act, the October 4, 2022 proposed notice also solicited public comments regarding whether ACHC's requirements met or exceeded the Medicare CoPs for ESRD facilities. No comments were received in response to our proposed notice.

V. Provisions of the Final Notice

A. Differences Between ACHC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared ACHC's ESRD facility accreditation requirements and survey process with the Medicare CoPs of parts 494, and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of ACHC's ESRD facility accreditation application, which were conducted as described in section III. of this final notice, yielded the following areas where, as of the date of this final notice, ACHC has completed revising its standards and certification processes in order to—

- Meet the standard's requirements of all of the following regulations:

++ Section 494.30(b)(3)(x), to clarify and address the contingency plans for staff who are not fully vaccinated for COVID–19.

++ Section 494.60(d)(1), to address dialysis facilities that do not provide one or more exits to the outside must comply with Life Safety Code (NFPA 101).

++ Section 494.60(d)(4), to clarify specific Life Safety Code provisions that may be waived, only if the waiver will not adversely affect the health and safety of the patients.

++ Section 494.60(d)(5), to clarify that no dialysis facility may operate in a building adjacent to an industrial high hazard area.

In addition to the standards review, CMS also reviewed ACHC's comparable survey processes, which were conducted as described in section III. of this final notice, and yielded the

following areas where, as of the date of this final notice, ACHC has completed revising its survey processes in order to demonstrate that it uses survey processes that are comparable to state survey agency processes by:

++ Revising the compliant policies and processes to align with the State Operations Manual, Chapter 5 guidance. In particular, the Administrative Review Offsite Investigation process to align with the triage process to track and trend for potential focus areas during the next onsite survey or complete an onsite complaint investigation.

++ Clarifying the quantifying data surrounding equipment and maintenance logs, specifically the equipment review. The survey reports or notes need to identify the number of logs reviewed, date or timeframes.

++ Providing surveyor training on documentation reviews and the process for verifying the completeness of the facility request.

++ Reinforcing and providing education to facility surveyors to request Dialysis Facility Reports, the reports provide aggregate data regarding laboratory values, demographic information, mortality rates, hospitalizations, infections, etc., which may assist the surveyors during the review of patient medical records.

++ Developing additional surveyor training for verifying all elements required for the CMS emergency preparedness requirements.

B. Term of Approval

Based on our review and observations described in section III. and section V. of this final notice, we approve ACHC as a national accreditation organization for ESRD facilities that request participation in the Medicare program. The decision announced in this final notice is effective April 11, 2023 through April 11, 2029 (6 years). In accordance with § 488.5(e)(2)(i) the term of the approval will not exceed 6 years.

While ACHC has taken actions based on the findings annotated in section V.A., of this final notice, (Differences Between ACHC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements) as authorized under § 488.8, we will continue ongoing review of ACHC's ESRD survey substance and processes. In keeping with CMS's initiative to increase AO oversight broadly, and ensure that our requested revisions by ACHC are completed, CMS expects more frequent review of ACHC's activities in the future.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Evell J.Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: March 15, 2023.

Evell J. Barco Holland,

Federal Register Liaison, Center for Medicare & Medicaid Services.

[FR Doc. 2023–05761 Filed 3–20–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10847]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 22, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10847 Information Collection Request for Negotiation Data Elements under Sections 11001 and 11002 of the Inflation Reduction Act

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a

60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Information Collection Request for Negotiation Data Elements under Sections 11001 and 11002 of the Inflation Reduction Act; *Use:* Under the authority in sections 11001 and 11002 of the Inflation Reduction Act of 2022 (Pub. L. 117–169), the Centers for Medicare & Medicaid Services (CMS) is implementing the Medicare Drug Price Negotiation Program (the ''Negotiation Program''), codified in sections 1191 through 1198 of the Social Security Act (''the Act''). The Act establishes the Negotiation Program to negotiate maximum fair prices (''MFPs''), defined at 1191(c)(3) of the Act, for certain high expenditure, single source selected drugs covered under Medicare Part B and Part D. For the first year of the Negotiation Program, the Secretary of Health and Human Services (the ''Secretary'') will select 10 Part D high expenditure, single source drugs for negotiation.

The statute requires that CMS consider certain data from Primary Manufacturers as part of the negotiation process. These data include the data required to calculate non-FAMP for selected drugs for the purpose of establishing a ceiling price, as outlined in section 1193(a)(4)(A), and the negotiation factors outlined in section 1194(e)(1) for the purpose of formulating offers and counteroffers process pursuant to section 1193(a)(4)(B). Some of these data are held by the Primary Manufacturer and are not currently available to CMS. Data described in section 1194(e)(1) and 1193(a)(4) must be submitted by the Primary Manufacturer.

Section 1194(e)(2) requires CMS to consider certain data on alternative treatments to the selected drug. Because the statute does not specify where these data come from, CMS will allow for optional submission from Primary Manufacturers and the public. CMS will additionally review existing literature, conduct internal analyses, and consult subject matter and clinical experts on the factors listed in 1194(e)(2) to ensure consideration of such factors. Manufacturers may optionally submit this information as part of their Negotiation Data Elements Information Collection Request Form. The public may optionally submit evidence about alternative treatments. *Form Number:* CMS–10847 (OMB control number: 0938–New); *Frequency:* Occasionally; *Affected Public Sector:* Individuals and Households, Private Sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 3,300; *Total Annual Responses:* 3,300; *Total Annual Hours:* 17,000. (For policy questions regarding this collection contact Lara Strawbridge at 410–786–6880).

Dated: March 16, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–05784 Filed 3–20–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; SOAR (Stop, Observe, Ask, Respond) to Health and Wellness Training (SOAR) Demonstration Grant Program Data (NEW COLLECTION)

AGENCY: Office on Trafficking in Persons, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office on Trafficking in Persons (OTIP), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new grant program: SOAR (Stop, Observe, Ask, Respond) to Health and Wellness Training (SOAR) Demonstration Grant Program Data.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The SOAR Demonstration Grant Program was developed in response to the Trafficking Victims Protection Act (TVPA) of 2000 (Pub. L. 106–386), § 106(b), as amended (22 U.S.C. 7104(b)(1)) and 22 U.S.C. 7105(b)(1)(B), which calls on agencies to ''increase public awareness of the dangers of trafficking and the protections that are available for victims of trafficking'' and provide ''services to assist potential victims of severe forms of trafficking in persons.'' The program's goal is to fund the implementation of SOAR trainings and capacity building efforts to identify, treat, and respond to patients or clients who have experienced severe forms of human trafficking as defined by the TVPA of 2000, as amended, among their patient or client population. SOAR is a nationally recognized, accredited training program delivered by OTIP's National Human Trafficking Training and Technical Assistance Center (NHTTAC) and designed to help target audiences identify and respond to those who are at risk of, are currently experiencing, or have experienced trafficking and connect them with needed resources. OTIP proposes to collect information to measure grant project performance, provide technical assistance to grant recipients, assess program outcomes, inform program evaluation, respond to congressional inquiries and mandated reports, and inform policy and program development that is responsive to the needs of victims.

The information collection will capture information on organizations enrolled in each grant recipient's multidisciplinary network of providers serving individuals who have experienced, or are at-risk of experiencing, a severe form of trafficking in persons, and clients served. Data elements are designed to capture information about organizational providers (*e.g.,* number of individuals trained to identify and respond to trafficking, types and number of trainings offered, types of services provided, number of clients enrolled in services, organizational barriers to service delivery and implementation, and total funds spent by category of assistance) and client

demographics (*e.g.,* total number of clients enrolled in services by providers within the recipient's multidisciplinary network by client age, sex, gender identity, sexual orientation, race/ethnicity, and language spoken).

Respondents: Healthcare, behavioral health, and social service delivery professionals.

Annual Burden Estimates: Recipients will be awarded funding for a 5-year period. This request is for the first 3 years of data collection. We will request an extension to continue data collection beyond 3 years.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Provider Capacity Building Indicators	75	4	1	300	100
SOAR Demonstration Grant Participant Training Form	4,500	1	0.75	3,000	1,125
Client Demographics Indicators	2,000	4	1	8,000	2,667
Human Trafficking Response Protocol (HTRP) Indicators	75	4	2.5	750	250
Multidisciplinary Network Provider Indicators	75	4	0.5	150	50
Categories of Assistance Form	75	1	2.5	188	63

Estimated Total Annual Burden Hours: 4,255.

(Authority: 22 U.S.C. 7104)

John M. Sweet, Jr.

ACF/OPRE Certifying Officer.

[FR Doc. 2023–05706 Filed 3–20–23; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB Budget No. 0970–0510]

Proposed Information Collection Activity; Refugee Support Services Federal Financial Report (Standard Form–425); Supplemental Data Collection

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) Office of Refugee Resettlement (ORR) plans to submit a generic information collection (GenIC) request under the umbrella generic: Generic Clearance for Financial Reports used for ACF Mandatory Grant Programs (0970–0510). This request is to include instructions for ORR Refugee Support Services grant recipients to provide supplemental financial information when submitting the already required Federal Financial Report (Standard Form (SF)–425), which is approved under Office of Management and Budget (OMB) number 4040–0014.

DATES: *Comments due within 14 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above and below.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ACF programs require detailed financial information from their grantees that allows ACF to monitor various specialized cost categories within each program, to closely manage program activities, and to have sufficient financial information to enable periodic thorough and detailed audits. Generic Clearance for Financial Reports used for ACF Mandatory Grant Programs allows ACF programs to efficiently develop and receive approval for financial reports that are tailored to specific funding recipients and the associated needs of the program. For more information about the umbrella generic, see: *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202108-0970-002.*

This specific GenIC request applies to all ORR Refugee Support Services grantees awarded regular base and ''set-aside'' funding, all funding received under the Afghanistan Supplemental Appropriation, and funds received under the Ukraine Supplemental Appropriations Act, 2022, and other appropriations as communicated. All grantees must complete reporting in accordance with Statute. Currently grantees use the SF–425 to report standard required federal expenditure data (OMB #: 4040–0014). The SF–425 requests grantees to report one cumulative amount for all expenditures. ORR is proposing to request that grantees break out expenditure data by financial account and program category/set aside by providing more detailed instructions for Box 12 of the SF–425 which designated for additional remarks. The proposed supplemental instructions will provide guidance and assist grantees with submitting the additional detail about federal expenditure data reported on the SF–245. The analysis of this data would further support adherence to program requirements.

Respondents: States, State Agency Grantee Designees.

ANNUAL BURDEN ESTIMATES

Title of information collection	Number of respondents	Annual frequency of responses	Hourly burden per response	Annual hourly burden
RSS SF–425 Supplemental Data Collection	53	4	4	212

Comments: The Department specifically requests comments on (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 412(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1522(c)(1)(A)).

John M. Sweet, Jr.

ACF/OPRE Certifying Officer.

[FR Doc. 2023–05666 Filed 3–20–23; 8:45 am]

BILLING CODE 4184–89–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Monitoring and Compliance for Office of Refugee Resettlement Care Provider Facilities (Office of Management and Budget #: 0970–0564)

AGENCY: Office of Refugee Resettlement; Administration for Children and Families; Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is inviting public comments on revisions to an approved information collection. The request will allow the Unaccompanied Children (UC) Program to enhance monitoring efforts at staff secure and long-term group home providers and influx care facilities that are not licensed by the state, as well as continue standard monitoring activities that ensure care provider facilities are in compliance with Federal and State laws and regulations, licensing and accreditation standards, ORR policies and procedures, and child welfare standards.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov*. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ORR is proposing the following revisions to this information collection for the purpose of establishing quarterly health and safety monitoring visits for facilities located in states that are unwilling to license programs provider care to UC. ORR previously published a notice requesting public comment on unlicensed facility monitoring tools for other levels of care, which were recently approved through emergency approval for a period of 180 days. This request is specific to staff secure and long-term group home providers and influx care facilities.

1. Added the following forms specific to staff secure and long-term group home facilities that were previously approved by OMB but were removed from the information collection due to the number of respondents. Note that ORR uses long-term foster care (LTFC) monitoring tools for both LTFC and long-term group home facilities; ORR does not operate unlicensed LTFC programs.

- Unlicensed Facility LTFC Monitoring Notes (Form M–6C–UF)
- Unlicensed Facility LTFC UC Case File Checklist (Form M–8B–UF)
- Unlicensed Facility Staff Secure Addendum to Case File Checklist (Form M–8D–UF)
- Unlicensed Facility Foster Home Onsite Monitoring Checklist (M–9B–UF)

2. Added the below-listed alternate version of a form that was previously approved by OMB but was removed from the information collection due to the number of respondents. Differences between the previously approve version and the alternate version are noted below.

- ICF Monitoring Notes (Form M–6E)
  - Instructs monitors to review the facility's contract and statement of work (as opposed to the grant application and cooperative agreement) to reflect the funding method used for ICFs
  - Removes the following sections that are specific to grants.
    - Fiscal year budget.
    - Key positions approved by the Project Officer
  - Instructs monitors to review Serious Incident Reports (SIRs) from the past three months (as opposed to six months for shelters). This revision does not represent a reduction in SIR review, rather it reflects the ongoing SIR review process that occurs for ICFs. Monitors are performing site visits within the first three months of an ICR opening, which means that there would only be three months' worth of SIRs available during the initial site visit. Thereafter, three months will cover review of all SIRs since the last site visit. For example, if an ICF opened at the start of January, the initial site visit would occur by the end of March and SIRs generated from January through March would be reviewed. The next site visit would then occur at the end of June and during that visit SIRs generated April through June would be review. There would be no need to review six months' worth of SIRs at that time because the SIRs generated January through March would have already been reviewed. This pattern of quarterly reviews would continue while the ICF is operational.
  - Reworded questions under the staffing plan section to be more specific to contracts.
  - Added instruction for monitors to ensure that the facility is following their supervision plan (as reported in the ICF Site Visit Guide) for any staff whose background checks are still pending.
  - Removed questions on state licensing.
  - Removed section on mosquito control inspections. These inspections were originally established to address concerns with the Zika virus and are no longer performed.

3. Added the below-listed alternate versions of forms already approved under this information collection. Differences between the already approved versions and the alternate versions are as noted below.

- ICF Monitoring Site Visit Guide (Form M–7G)—Revisions were made to develop a more in-depth guide to reflect the size and complexity of influx sites. ORR plans to pilot this revised guide at ICFs and later decide on whether some or all of these revisions should be made to site visit guides for other levels of care. ORR will seek OMB approval for any future revision to other versions of the site visit guide.
  - Reorganized and grouped questions under different sections, as well as rewording questions and instructions for clarity.
  - Added text boxes and tables to make clear where the ICF should enter information.
  - Added areas for the ICF to provide a brief overview of their site operations and list of subcontractors and their respective scopes of work.
  - Expanded the list of facility points of contact requested.
  - Added areas for the ICF to share any innovative and/or best practices implemented at the site and for the ICF

to describe know deficiencies and/or areas for improvement.

○ Added a table in the stakeholders section to prompt the ICF to provide more detail information about the frequency and type of collaboration as well as areas in need of improvement.

○ Expanded section on personnel to include questions about personnel evaluation practices, whistleblower policies, and significant staffing changes, vacancies, deficiencies, and/or barriers to personnel capacity.

○ In addition to providing copies of internal procedures, ICFs are asked to document information about the personnel responsible for internal reviews, protocols for responding to noncompliance, and how the ICF protects child privacy and confidentiality.

○ Expands the question asking for the program's video monitoring policies and procedures to include all perimeter and internal security mechanisms.

○ In addition to providing copies of emergency and evacuation plans, programs are asked to describe related procedures and provide information on emergency drills and after-action reviews.

○ Added area for programs to describe their safety inspection practices and related drills, as well as an area to note concerns/deficiencies related to safety and security.

○ Added questions on the program's procedures for staffing cases, case status updates, and how case managers coordinate with other discipline (*e.g.,* clinical).

○ Split the question asking for the programs discharge procedures into several questions that prompt the program to specifically provide information about their procedures for transfers, age redetermination cases, and managing age outs.

○ Added question that requests the program's procedures on facilitating visits among children in care.

○ Added question asking the program to note any complex or especially vulnerable cases that required specialized service coordination.

○ Added question asking the program to note any concerns/deficiencies related to case management.

○ Added new section on child supervision that asks for program's procedures on supervision plans and direct care staffing ratios, determining room/bed assignments, accurately monitoring the location of the child, and behavior management.

○ Expanded the section that asks for a description of ancillary services to include recreational/leisure, religious, languages access, and phone call, visitation, and mail services (in addition to education and transportation).

○ In addition to requesting copies of nutritional services procedures, adds a section for programs to describe these services. This includes food storage and safety protocols, how child dietary needs are meet, how cultural and religious preferences are meet, and any concerns/deficiencies.

○ Expands the medical services section to add questions asking the program to describe their medical intakes procedures, onsite medical services, medication administration protocols, medical records system, the process for referring a child for offsite medical services, and vaccination procurement and administration protocols.

○ Expands the mental health services section to add questions asking the program to describe their mental health intake procedures and onsite mental health services.

○ In addition to requesting copies of prevention of sexual abuse procedures and related materials, asks the program to describe several specific aspects of their procedures.

○ Breaks the general question asking the program to describe their SIR procedures into several more specific questions on who the responsible parties are for submitting reports, follow-up/addendums, and notification/coordination with external entities.

○ Adds a new question asking the program how long it took to complete the form.

• ICF Personnel File Checklist (Form M–10E)—No differences. The ICF and standard shelter versions are identical.

For information about all currently approved forms under this OMB number, see: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202211-0970-002*.

Respondents: ORR grantee and contractor staff; UC; and other Federal agencies.

Annual Burden Estimates

Note: These burden estimates include burdens related to the revisions described above *and* currently approved forms for which we are not proposing any changes.

ESTIMATED BURDEN HOURS FOR RESPONDENTS

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Corrective Action Report (Form M–1)	262	0.4	5.00	524.00
FFS Compliance and Safety Site Visit Report (Form M–3A)	262	12.0	1.00	3,144.00
Out-of-Network Site Visit Report (Form M–3B)	24	5.0	1.00	120.00
Checklist for a Child-Friendly Environment (Form M–4)	262	12.0	0.25	786.00
Incident Reviews (Forms M–5A to M–5B)	262	0.3	1.50	117.90
Site Visit and Remote Monitoring Site Visit Guides (Forms M–7A to M–7B)	114	1.0	13.00	1,482.00
LTFC Site Visit and LTFC Remote Monitoring Site Visit Guides (Forms M–7C to M–7D)	18	1.0	6.00	108.00
Home Study and Post-Release Services Site Visit Guide (Form M–7E)	30	1.0	6.00	180.00
Voluntary Agency Site Visit Guide (Form M–7F)	5	1.0	8.00	40.00
ICF Monitoring Site Visit Guide (Form M–7G)	3	1.0	15.00	45.00
Unlicensed Facility Site Visit Guide (Form M–7A–UF)	56	4.0	1.00	224.00
Unlicensed Facility UC Case File Checklist (Form M–8A–UF)	56	20.0	1.00	1,120.00
Unlicensed Facility LTFC UC Case File Checklist (Form M–8B–UF)	1	20.0	1.00	20.00
Unlicensed Facility Staff Secure Addendum to Case File Checklist (Form M–8D–UF)	2	20.0	1.00	40.00
Program Staff Questionnaires (Forms M–11A to M–11K)	917	1.0	1.00	917.00
Secure Detention Officer Questionnaire (Form M–11L)	1	1.0	1.00	1.00
Long Term Foster Care Home Finder Questionnaire (Form M–11M)	18	1.0	1.00	18.00
Long Term Foster Care Independent Living Life Skills Staff Questionnaire (Form M–11N)	18	1.0	1.00	18.00

ESTIMATED BURDEN HOURS FOR RESPONDENTS—Continued

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Long Term Foster Care Foster Parent Questionnaire (form M–11O)	35	1.0	0.75	26.25
Interpreter Questionnaire (Form M–11P)	115	2.0	0.50	115.00
Unlicensed Facility Program Staff Questionnaires (Forms M–11A–UF to M–11K–UF)	56	32.0	1.00	1,792.00
Unlicensed Facility Interpreter Questionnaire (Form M–11P–UF)	56	4.0	0.50	112.00
UC Questionnaires (Forms M–12A to M–12B & M–12E)	563	1.0	0.50	281.50
Long Term Foster Care Client Questionnaire (M–12C)	88	1.0	0.50	44.00
Secure Client Questionnaire (Form M–12D)	5	1.0	0.50	2.50
Unlicensed Facility UC Questionnaires (Forms M–12A–UF to M–12B–UF & M–12E–UF)	1,120	1.0	0.50	560.00
Home Study and Post-Release Services Director Questionnaire (Form M–13A)	30	1.0	1.00	30.00
Home Study and Post-Release Services Caseworker Questionnaire (Form M–13B)	90	1.0	1.00	90.00
Legal Service Provider Questionnaire (Form M–13C)	114	1.0	1.00	114.00
Long Term Foster Care Legal Service Provider Questionnaire (Form M–13D)	18	1.0	0.75	13.50
Case Coordinator Questionnaire (Form M–13E)	131	1.0	1.00	131.00
Unlicensed Facility Legal Service Provider Questionnaire (Form M–13C–UF)	224	1.0	1.00	224.00
Unlicensed Facility Case Coordinator Questionnaire (Form M–13E–UF)	224	1.0	1.00	224.00
Preaudit Questionnaire and Audit Documentation Requested Checklist (Form M–17A)	78	1.0	4.00	312.00
Instructions for Site Visit and Facility Tour (Form M–17B)	78	1.0	2.00	156.00
Interview Guide: Random Sample of Staff Interview (Form M–17C)	312	1.0	1.00	312.00
Interview Guide: Program Director (Form M–17D)	78	1.0	1.00	78.00
Interview Guide: PSA Compliance Manager (Form M–17E)	78	1.0	1.00	78.00
Interview Guide: Specialized Staff (Form M–17F)	156	1.0	1.00	156.00
Interview Guide: Unaccompanied Child (Form M–17G)	780	1.0	0.50	390.00
PSA Audit Corrective Action Report (Form M–17H)	78	1.0	1.00	78.00
Estimated Annual Burden Hours Total				14,224.65

ESTIMATED BURDEN HOURS FOR CONTRACTOR INTERIM FINAL RULE AUDITORS

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Preaudit Questionnaire and Audit Documentation Requested Checklist (Form M–17A)	8	48.0	3.00	1,152.00
Instructions for Site Visit and Facility Tour (Form M–17B)	8	48.0	1.00	384.00
Interview Guide: Random Sample of Staff Interview (Form M–17C)	8	48.0	1.00	384.00
Interview Guide: Program Director (Form M–17D)	8	48.0	1.00	384.00
Interview Guide: PSA Compliance Manager (Form M–17E)	8	48.0	1.00	384.00
Interview Guide: Specialized Staff (Form M–17F)	8	48.0	1.00	384.00
Interview Guide: Unaccompanied Child (Form M–17G)	8	48.0	0.50	192.00
PSA Audit Corrective Action Report (Form M–17H)	8	48.0	2.00	768.00
Estimated Annual Burden Hours Total:				4,032.00

ESTIMATED BURDEN HOURS FOR CONTRACTOR MONITORS—UNLICENSED FACILITIES

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Unlicensed Facility Monitoring Notes (Form M–6A–UF)	18	12.0	12.00	2,592.00
Unlicensed Facility LTFC Monitoring Notes (Form M–6C–UF)	18	0.2	12.00	43.20
ICF Monitoring Notes (Form M–6E–UF)	18	0.7	12.00	151.20
Unlicensed Facility Site Visit Guide (Form M–7A–UF)	18	12.0	29.00	6,264.00
ICF Monitoring Site Visit Guide (Form M–7G)	18	0.7	29.00	365.40
Unlicensed Facility UC Case File Checklist (Form M–8A–UF)	18	62.0	6.00	6,696.00
Unlicensed Facility LTFC UC Case File Checklist (Form M–8B–UF)	18	1.0	6.00	108.00
Unlicensed Facility Staff Secure Addendum to Case File Checklist (Form M–8D–UF)	18	2.0	6.00	216.00

ESTIMATED BURDEN HOURS FOR CONTRACTOR MONITORS—UNLICENSED FACILITIES—Continued

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Unlicensed Facility Onsite Monitoring Checklist (Form M–9A–UF)	18	12.0	4.00	864.00
Unlicensed Facility Foster Home Onsite Monitoring Checklist (M–9B–UF)	18	0.4	4.00	28.80
Unlicensed Facility Personnel File Checklist (Form M–10A–UF)	18	50.0	1.00	900.00
ICF Personnel File Checklist (Form M–10E)	18	3.0	1.00	54.00
Unlicensed Facility Program Staff Questionnaires (Forms M–11A–UF to M–11K–UF)	18	100.0	1.00	1,800.00
Unlicensed Facility Interpreter Questionnaire (Form M–11P–UF)	18	12.0	0.50	108.00
Unlicensed Facility UC Questionnaires (Forms M–12A–UF to M–12B–UF & M–12E–UF)	18	62.0	0.50	558.00
Unlicensed Facility Legal Service Provider Questionnaire (Form M–13C–UF)	18	12.0	0.75	162.00
Unlicensed Facility Case Coordinator Questionnaire (Form M–13E–UF)	18	12.0	1.00	216.00
Estimated Annual Burden Hours Total:				21,126.60

ESTIMATED BURDEN HOURS FOR CONTRACTOR MONITORS—PREVIOUSLY APPROVED FOR LICENSED FACILITIES

Information collection title	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual total burden hours
Corrective Action Report (Form M–1)	4	25.0	22.00	2,200.00
Site Visit and Remote Monitoring Site Visit Guides (Forms M–7A to M–7B)	4	7.0	29.00	812.00
LTFC Site Visit and LTFC Remote Monitoring Site Visit Guides (Forms M–7C to M–7D)	4	1.0	21.00	84.00
Home Study and Post-Release Services Site Visit Guide (Form M–7E)	4	2.0	21.00	168.00
Voluntary Agency Site Visit Guide (Form M–7F)	4	0.4	28.00	44.80
Personnel File Checklist (Form M–10A)	4	31.0	1.00	124.00
Supplement to Personnel File Checklist (Form M–10B)	4	54.0	1.00	216.00
Home Study and Post-Release Services Personnel File Checklist (Form M–10C)	4	6.0	1.00	24.00
Long Term Foster Care Foster Parent Checklist (Form M–10D)	4	2.0	0.50	4.00
Program Staff Questionnaires (Forms M–11A to M–11K)	4	54.0	1.00	216.00
Secure Detention Officer Questionnaire (Form M–11L)	4	0.1	1.00	0.40
Long Term Foster Care Home Finder Questionnaire (Form M–11M)	4	1.0	1.00	4.00
Long Term Foster Care Independent Living Life Skills Staff Questionnaire (Form M–11N)	4	1.0	1.00	4.00
Long Term Foster Care Foster Parent Questionnaire (form M–11O)	4	2.0	0.75	6.00
UC Questionnaires (Forms M–12A to M–12B & M–12E)	4	33.0	0.50	66.00
Long Term Foster Care Client Questionnaire (M–12C)	4	5.0	0.50	10.00
Secure Client Questionnaire (Form M–12D)	4	0.4	0.50	0.80
Home Study and Post-Release Services Director Questionnaire (Form M–13A)	4	2.0	0.50	4.00
Home Study and Post-Release Services Caseworker Questionnaire (Form M–13B)	4	6.0	1.00	24.00
Legal Service Provider Questionnaire (Form M–13C)	4	7.0	1.00	28.00
Long Term Foster Care Legal Service Provider Questionnaire (Form M–13D)	4	1.0	0.75	3.00
Case Coordinator Questionnaire (Form M–13E)	4	8.0	1.00	32.00
Monitoring Visit (Form M–14)	4	8.0	0.50	16.00
Monitoring Schedule (Form M–15)	4	0.3	0.30	0.36
Estimated Annual Burden Hours Total:				4,091.36

Comments: The Department specifically requests comments on (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; *Flores* v. *Reno* Settlement Agreement, No. CV85–4544–RJK (C.D. Cal. 1996).

John M. Sweet, Jr.

ACF/OPRE Certifying Officer.

[FR Doc. 2023–05756 Filed 3–20–23; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1119]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) 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 the information collection provisions of reporting and recordkeeping requirements for firms that process acidified foods and thermally processed low-acid foods in hermetically sealed containers.

DATES: Either electronic or written comments on the collection of information must be submitted by May 22, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 22, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–N–1119 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), 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, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether

the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Canning Establishment Registration, Process Filing, and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers—21 CFR 108.25 and 108.35, and 21 CFR Parts 113 and 114

OMB Control Number 0910–0037—Extension

Section 402 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342) deems a food to be adulterated, in part, if the food bears or contains any poisonous or deleterious substance that may render it injurious to health. Section 301(a) of the FD&C Act (21 U.S.C. 331(a)) prohibits the introduction or delivery for introduction into interstate commerce of adulterated food. Under section 404 of the FD&C Act (21 U.S.C. 344), our regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit us to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum.* The spores of *C. botulinum* need to be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, our regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with us using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(1) (21 CFR 108.25(c)(1) and 108.35(c)(1)). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Forms FDA 2541d, FDA 2541e, FDA 2541f for all methods except aseptic processing, or Form FDA 2541g for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms also must document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§ 113.60(c) (thermally processed low-acid foods) and § 114.80(b) (acidified foods)).

The records of processing information are periodically reviewed during factory inspections by FDA to verify fulfillment of the requirements in parts 113 or 114. Scheduled thermal processes are examined and reviewed to determine their adequacy to protect public health. In the event of a public health emergency, records are used to pinpoint potentially hazardous foods rapidly and thus limit recall activity to affected lots.

As described in our regulations, processors may obtain the paper version of Forms FDA 2541, FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g at *https://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/AcidifiedLACFRegistration/ucm2007436.htm.* Processors mail completed paper forms to us. However, processors who are subject to § 108.25 and/or § 108.35 have an option to submit Forms FDA 2541, FDA 2541d, FDA 2541e, FDA 2541f, and FDA 2541g electronically.

Although we encourage commercial processors to use the electronic submission system for plant registration and process filing, we will continue to make paper-based forms available. To standardize the burden associated with process filing, regardless of whether the process filing is submitted electronically or using a paper form, we are offering the public the opportunity to use four forms, each of which pertains to a specific type of commercial processing and is available both on the electronic submission system and as a paper-based form. The electronic submission system and paper-based form ''mirror'' each other to the extent practicable. The four process filing forms are as follows:

- Form FDA 2541d (Food Process Filing for Low-Acid Retorted Method);
- Form FDA 2541e (Food Process Filing for Acidified Method);
- Form FDA 2541f (Food Process Filing for Water Activity/Formulation Control Method); and
- Form FDA 2541g (Food Process Filing for Low-Acid Aseptic Systems).

Description of Respondents: The respondents to this information collection are commercial processors and packers of acidified foods and thermally processed low-acid foods in hermetically sealed containers.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response [2]	Total hours
108.25(c)(1) and 108.35(c)(1); Food canning establishment registration.	2541	645	1	645	0.17 (10 minutes)	110

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section; activity	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response [2]	Total hours
108.25(c)(2); Food process filing for acidified method.	2541e	726	11	7,986	0.333 (20 minutes)	2,659
108.35(c)(2); Food process filing for low-acid retorted method.	2541d	336	12	4,032	0.333 (20 minutes)	1,343
108.35(c)(2); Food process filing for water activity/formulation control method.	2541f	37	6	222	0.333 (20 minutes)	74
108.35(c)(2); Food process filing for low-acid aseptic systems.	2541g	42	22	924	0.75 (45 minutes)	693
108.25(d); 108.35(d) and (e); Report of any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce.	N/A	1	1	1	4	4
Total						4,883

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the number of respondents in table 1 on registrations, process filings, and reports received. The hours per response reporting estimates are based on our experience with similar programs and information received from industry.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
108, 113, and 114	10,392	1	10,392	250	2,598,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our regulations require that processors mark thermally processed low-acid foods in hermetically sealed containers (§ 113.60(c)) and acidified foods (§ 114.80(b)) with an identifying code to permit lots to be traced after distribution. No burden has been estimated for the third-party disclosure requirements in §§ 113.60(c) and 114.80(b) because the coding process is done as a usual and customary part of normal business activities. Coding is a business practice in foods for liability purposes, inventory control, and process control in the event of a problem. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: March 15, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05742 Filed 3–20–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–5280]

Determination of Regulatory Review Period for Purposes of Patent Extension; ESPEROCT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ESPEROCT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by May 22, 2023. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 21, 2023. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late,

untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 22, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–5280 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ESPEROCT.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ESPEROCT (antihemophilic factor (recombinant), glycopegylated-exei). ESPEROCT is indicated for use in adults and children with hemophilia A for: (1) on-demand treatment and control of bleeding episodes, (2) perioperative management of bleeding, and (3) routine prophylaxis to reduce the frequency of bleeding episodes. Subsequent to this approval, the USPTO received a patent term restoration application for ESPEROCT (U.S. Patent No. 8,536,126) from Novo Nordisk A/S, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated August 20, 2020, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ESPEROCT represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ESPEROCT is 3,129 days. Of this time, 2,771 days occurred during the testing

phase of the regulatory review period, while 358 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* July 29, 2010. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on July 29, 2010.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* February 27, 2018. FDA has verified the applicant's claim that the biologics license application (BLA) for ESPEROCT (BLA 125671) was initially submitted on February 27, 2018.

3. *The date the application was approved:* February 19, 2019. FDA has verified the applicant's claim that BLA 125671 was approved on February 19, 2019.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,170 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: March 13, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–05658 Filed 3–20–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Solicitation of Nominations for Membership To Serve on the Council on Graduate Medical Education

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for nominations.

SUMMARY: HRSA is seeking nominations of qualified candidates for consideration for appointment as members of the Council on Graduate Medical Education (COGME or Council). COGME provides advice and recommendations on policy, program development, and other matters of significance concerning the physician training and the physician workforce. Issues addressed by COGME include the supply and distribution of the physician workforce in the United States, including any projected shortages or excesses of physicians in medical and surgical specialties and subspecialities; international medical graduates; the nature and financing of undergraduate and graduate medical education; appropriation levels for certain programs under title VII of the PHS Act; and deficiencies in databases of the supply and distribution of the physician workforce and postgraduate programs for training physicians.

DATES: HRSA will accept nominations on a continuous basis.

ADDRESSES: Nomination packages may be mailed to Advisory Council Operations, Bureau of Health Workforce, HRSA, Room 15N–35, 5600 Fishers Lane, Rockville, Maryland 20857 or submitted electronically by email to: *BHWAdvisoryCouncilFRN@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Curi Kim, M.D., MPH, at 240–472–2313 or email at *ckim@hrsa.gov.* A copy of the current COGME charter, membership, and reports can be obtained by accessing the COGME website at *https://www.hrsa.gov/advisory-committees/graduate-medical-edu.*

SUPPLEMENTARY INFORMATION: Authorized in 1986, COGME submits advice and recommendations to the Secretary of HHS; the Senate Committee on Health, Education, Labor and Pensions; and the House of Representatives Committee on Energy and Commerce. Additionally, COGME encourages entities providing graduate medical education to voluntarily achieve the recommendations of the Council. Meetings take place at least twice per year.

Nominations: HRSA is requesting nominations for voting members to serve as Special Government Employees on COGME to include individuals who represent of practicing primary care physicians, national and specialty physician organizations, international medical graduates, medical student and house staff associations, schools of allopathic and osteopathic medicine, public and private teaching hospitals, and health insurers, business, and labor. The Secretary of HHS appoints COGME members to fulfill the duties of the Council. Interested applicants may self-nominate or be nominated by another individual or organization.

Individuals selected for appointment to COGME will be invited to serve for 4 years. Members appointed as SGEs receive a stipend and reimbursement for per diem and travel expenses incurred for attending COGME meetings and/or conducting other business on behalf of COGME, as authorized by section 5 U.S.C. 5703 for persons employed intermittently in government service and PHS Act section 762(g).

A nomination package should include the following information for each applicant: (1) if nominated by another individual or organization, a letter of recommendation from the nominator stating the basis for the nomination (*i.e.,* what specific attributes, perspectives, and/or skills does the individual possess that would benefit the workings of COGME) and the nominee's field(s) of expertise as well as the nominator's name, affiliation, and contact information (address, daytime telephone number, and email address); (2) a letter of interest from the applicant stating the reasons the applicant would like to serve on COGME; and (3) a biographical sketch of the applicant, including the applicant's curriculum vitae and contact information (address, daytime telephone number, and email address). Nomination packages may be submitted directly by the applicant or by the person/organization nominating the candidate.

HHS endeavors to ensure that the membership of COGME is balanced fairly in terms of points of view represented and that individuals from a broad representation of geographic areas, gender, and ethnic and minority groups, as well as individuals with

disabilities, are considered for membership. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and or cultural, religious, or socioeconomic status.

Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is required for HRSA ethics officials to determine whether there is a potential conflict of interest between the Special Government Employee's public duties as a member of COGME and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations, and to identify any required remedial action needed to address the potential conflict.

Authority: PHS Act Section 762 (42 U.S.C. 294o), as amended. COGME is governed by provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. 10), which sets forth standards for the formation and use of advisory committees and applies to the extent that the provisions of the Federal Advisory Committee Act do not conflict with the requirements of PHS Act section 762.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–05782 Filed 3–20–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request: Information Collection Request Title: Evaluation of the Maternal and Child Health Bureau's Autism CARES Act Initiative, OMB No. 0915–0335–Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an information collection request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than May 22, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer, at 301–594–4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Evaluation of the Maternal and Child Health Bureau's Autism CARES Act Initiative, OMB No. 0915–0335–Revision.

Abstract: HRSA's Maternal and Child Health Bureau (MCHB) provides funds to support several programs related to autism, as authorized by 42 U.S.C. 280i–1 (title III, section 399BB of the Public Health Service Act), as amended by the Autism Collaboration, Accountability, Research, Education, and Support (CARES) Act of 2019 (Pub. L. 116–60). The Autism CARES Act of 2019 emphasizes improving health outcomes and the well-being of individuals with Autism Spectrum Disorder and Developmental Disabilities across the lifespan.

MCHB's programs related to autism fall within three distinct but complementary areas—research, state systems, and training. The awards advance research on early screening and interventions for autism and developmental disabilities; improve the capacity of state public health agencies to build and maintain coordinated systems of services for individuals with autism and developmental disabilities; and train the health care workforce to screen, refer, and provide services for children and youth with autism and developmental disabilities. MCHB currently funds 12 programs and 95 awardees. HRSA seeks to implement annual comprehensive evaluations of MCHB's Autism CARES Initiative investments.

This ICR is a revision to an existing package; this study is the fifth evaluation of HRSA's autism activities and employs similar data collection methodologies as the prior studies. Grantee interviews remain the primary form of data collection. Minor proposed revisions to the data collection process include modifications to the interview questions and grantee survey based on the current legislation and HRSA's Notices of Funding Opportunity for programs authorized under the Autism CARES Act. In addition, the previous data collection compiled survey responses from all grantees, whereas this revised data collection will only seek survey responses from the Research and State Systems grantees. The previous data collection also included a quantitative data collection form for the Research grantees that the current data collection will not collect. These changes result in fewer burden hours estimated across all primary data collection activities.

Need and Proposed Use of the Information: The purpose of this data collection is to implement a comprehensive evaluation that describes the activities, accomplishments, outcomes, barriers, and challenges of the grant programs in implementing the provisions of the Autism CARES Act. The data will be used to (1) conduct performance monitoring of the programs; (2) provide credible and rigorous evidence of program effectiveness; (3) meet program needs for accountability, decision-making, and quality assurance; and (4) strengthen the evidence base for best practices.

Likely Respondents: The survey respondents will include Principal Investigators/Project Directors from the research programs and networks (Autism Intervention Research Network on Physical Health, Autism Intervention Research Network on Behavioral Health, MCHB Secondary Data Analysis Research Program, Autism Field-Initiated Innovative Research Studies Program, Autism Single Investigator Innovation Program, the Developmental-Behavioral Pediatrics Research Network, and the Healthy Weight Research Network for Children with Autism and Other Developmental Disabilities); and state systems programs (State Innovations) and coordinating center (State Public Health Coordinating Center for Autism). The respondents for the interviews will include Principal Investigators/Project Directors from the research and state systems programs above, and the training programs (Leadership Education in Neurodevelopmental and Related Disabilities program, the Developmental Behavioral Pediatrics program, and the National Interdisciplinary Training Resource Center).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Grant program/instrument	Number of respondents	Average number of responses per respondent	Total responses	Average burden per response (in hours)	Total hour burden
Research: Survey for individual grantees	12	1	12	0.5	6.0
Research: Survey for research networks	4	1	4	0.5	2.0
Research: Interview guide for individual grantees	12	1	12	1.5	18.0
Research: Interview guide for research networks	4	1	4	1.5	6.0
State Systems: Survey for state innovation grants	5	1	5	0.5	2.5
State Systems: Interview guide for the state innovation grants	5	1	5	1.5	7.5
State Systems: Interview guide for the state coordinating center	1	1	1	1.5	1.5
Training: Interview guide for the individual training grantees	72	1	72	1.5	108.0
Training: Interview Guide for the Resource Center	1	1	2	1.5	3.0
Total	116		116		154.5

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–05747 Filed 3–20–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of General Medical Sciences Special Emphasis Panel, Review of IDeA Clinical Research Resource Center (U24), April 7, 2023, 10:00 a.m.–05:00 p.m., National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 which was published in the **Federal Register** on March 06, 2023, FR Doc 2023–04476, 88 FR 13837.

This notice is being amended to change the meeting date and time from April 7, 2023, 10:00 a.m.–05:00 p.m. to April 14, 2023, 09:30 a.m.–12:00 p.m. The meeting location will stay the same. The meeting is closed to the public.

Dated: March 15, 2023.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05703 Filed 3–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Mass Spectrometric Assays and Type 1 Diabetes.

Date: April 11, 2023.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7351, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 15, 2023.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05708 Filed 3–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the National Institute of Child Health and Human Development Special Emphasis Panel.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Elucidation and Validation of the role of Transporters.

Date: March 22, 2023.

Closed: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis E. Dettin, Ph.D., MS, MA, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892, 301–827–8231, *luis_dettin@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to a review oversight.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: March 15, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05711 Filed 3–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The meeting will be open to the public as indicated below and held as a hybrid meeting. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session can be accessed at the following NIH Videocast URL link *https://videocast.nih.gov.*

Name of Committee: National Advisory Council for Complementary and Integrative Health.

Date: May 12, 2023.

Closed: 9:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31C/6th Floor, 9000 Rockville Pike, Bethesda, MD 20882 (Hybrid Meeting).

Open: 12:00 p.m. to 4:00 p.m.

Agenda: Reports and Updates about Recent and Ongoing NCCIH Led or Involved Activities by NCCIH staff and its Director.

Place: National Institutes of Health, 31C/6th Floor, 9000 Rockville Pike, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Martina Schmidt, Ph.D., Director, Division of Extramural Activities, National Center for Complementary, & Integrative Health, NIH 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–3456, *schmidma@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, email address, telephone number and when applicable, the business or professional affiliation of the interested person. Any member of the public may submit written comments no later than 15 days after the meeting.

Information is also available on the Institute's/Center's home page: *https://www.nccih.nih.gov/news/events/advisory-council-84th-meeting,* where a more detailed agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: March 15, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05713 Filed 3–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; High Impact NIDDK Applications (RC2).

Date: April 14, 2023.

Time: 3:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7015, Bethesda, MD 20892, 301–594–4721, *ryan.morris@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 15, 2023.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05712 Filed 3–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pathophysiology of Aging and Neurodegeneration.

Date: April 7, 2023.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Roger Alan Bannister, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1010–D, Bethesda, MD 20892, (301) 435–1042, *bannisterra@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–HD–23–035: Maternal Health Research Centers of Excellence.

Date: April 11–12, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Bellinger, Ph.D., Scientific Review Administrator, Center for Scientific of Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, 301–827–4446, *bellingerjd@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 15, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05707 Filed 3–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Topics in Drug Development and Molecular Pharmacology-A.

Date: April 3, 2023.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bidyottam Mittra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20894, 301.435.0000, *bidyottam.mittra@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 15, 2023

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05702 Filed 3–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Advisory Council, March 27, 2023, 10AM to March 27, 2023, 3: p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Conference Room 160A, Bethesda, MD, 20892. which was published in the **Federal Register** on March 07, 2023, V88#44, FR DOC #2023–04622.

This meeting is being amended to change the meeting location to 6700B Rockledge Drive, Conference Rooms C/B/A, Bethesda, MD 20892. The date and time remain the same. The meeting is open to the public.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should register at: *https://public.csr.nih.gov/AboutCSR/Organization/CSRAdvisoryCouncil/Registration*

In the interest of security, NIH has stringent procedures for entrance into NIH federal property. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: March 15, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05665 Filed 3–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR22–171: NIDDK Central Repository Non-Renewable Sample Access (X01 Clinical Trial Not Allowed).

Date: April 24, 2023.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7349, Bethesda, MD 20892, (301) 594–8894, *begumn@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 15, 2023.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–05704 Filed 3–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2023–0013]

Agency Information Collection Activities: DHS Individual Complaint of Employment Discrimination, 1610–0001

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until May 22, 2023. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: You may submit comments, identified by docket number Docket # DHS–2023–0013, at:

○ *Federal Rulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # DHS- 2023–0013. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: This form provides information necessary for processing formal complaints of employment discrimination in accordance with EEOC Management Directive (EEO–MD) 110, and 29 CFR part 1614. It is the policy of the Government of the United States to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age, disability, protected genetic information, or status as a parent, and to promote the full realization of equal employment opportunity (EEO) through a continuing affirmative program in each agency.

Persons who claim to have been subjected to these types of discrimination, or to retaliation for opposing these types of discrimination or for participating in any stage of administrative or judicial proceedings relating to them, can seek a remedy under Title VII of the Civil Rights Act (Title VII) (42 U.S.C. 2000e *et seq.*) (race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*) (age), the Equal Pay Act (29 U.S.C. 206(d)) (sex), the Rehabilitation Act (29 U.S.C. 791 *et seq.*) (disability), the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff *et seq.*) (genetic information), and Executive Order 11478 (as amended by Executive Orders 13087 and 13152) (sexual orientation or status as a parent).

The Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) adjudicates discrimination complaints filed by current and former DHS employees, as well as applicants for employment at DHS. The complaint adjudication process for statutory rights is outlined in the Equal Employment Opportunity Commission (EEOC) regulations found at Title 29, Code of Federal Regulations, Part 1614, and EEOC Management Directive 110. For complaints alleging discrimination prohibited by Executive Order 11478, DHS follows procedures similar to the procedures for statutory rights, to the extent permitted by law.

The recordkeeping provisions are designed to ensure that a current employee, former employee, or applicant for employment claiming to be aggrieved or that person's attorney provide a signed statement that is sufficiently precise to identify the aggrieved individual and the agency and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted. The complaint form is used for original allegations of discrimination but also for amendments to underlying complaints of discrimination. The form also determines whether the person is willing to participate in mediation or other available types of alternative dispute resolution (ADR) to resolve their complaint; Congress has enacted legislation to encourage the use of ADR in the federal sector and the form ensures that such an option is considered at this preliminary stage of the EEO complaint process.

A complainant may access the complaint form on the agency website and may submit a completed complaint form electronically to the relevant Component's EEO Office. The complaint form can then be directly uploaded into the DHS EEO Enterprise Complaints Tracking System, also known as ''iComplaints.''

There is no change or adjustment to the burden associated with the collection of information associated with the DHS complaint form. DHS is not proposing to make any changes to the DHS compliant form. This request is a renewal of the current ICR collection expiring in 60 days.

This is a renewal of the ICR request.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

Based on an average of the formal EEO complaints filed at DHS during Fiscal Years 2014 through 2021, there are approximately 1,200 respondents each year. Of the 1,200 respondents, 1,064 are federal employees who are exempt (noted below). We estimate the

information collection to take approximately 30 minutes.

136 respondents × ½ hour = 68 hours

3. Enhance the quality, utility, and clarity of the information to be collected; and This information collection is conducted in manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses. A complainant may access the complaint form on the agency website and may submit a completed complaint form electronically to the relevant Component's EEO Office. The complaint form can then be directly uploaded into the DHS EEO Enterprise Complaints Tracking System, also known as ''icomplaints.''

Analysis

Agency: Department of Homeland Security (DHS).

Title: DHS Individual Complaint of Employment Discrimination.

OMB Number: 1610–0001.

Frequency: Annually.

Affected Public: Affected Public.

Number of Respondents: 1200.

Estimated Time per Respondent: 30 Mins.

Total Burden Hours: 600 Hours.

Robert Dorr,

Executive Director, Business Management Directorate.

[FR Doc. 2023–05696 Filed 3–20–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7071–N–04; OMB Control No. 2502–0621]

60-Day Notice of Proposed Information Collection: Housing Counseling Notice of Funding Opportunity

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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 60 days of public comment.

DATES: *Comments Due Date: May 22, 2023.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information.

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.

A. Overview of Information Collection

Title of Information Collection: Housing Counseling Notice of Funding Opportunity (NOFO).

OMB Approval Number: 2502–0621.

OMB Expiration Date: June 30, 2023.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–9906–L; HUD–9906–P; NOFO 9906 Charts (A, B, E); HUD 424–CB; HUD–2880; SF–424; SF–LLL.

Description of the need for the information and proposed use: This is a revision of the collection because minor and clarifying revisions were made to the Form 9906 and its supplemental charts. This information is collected in connection with HUD's Housing Counseling Program and will be used by HUD to determine that the Housing Counseling grant applicant meets the requirements of the Notice of Funding Opportunity (NOFO). Information collected is also used to assign points for awarding grant funds on a competitive and equitable basis. HUD's Office of Housing Counseling will also use the information to provide housing counseling services through private or public organizations with special competence and knowledge in counseling low and moderate-income families. The information is collected from housing counseling agencies that participate in HUD's Housing Counseling Program. The information is collected via the Form 9906 (grant application chart) and its supplemental charts.

Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 300.

Frequency of Response: 1.

Average Hours per Response: 40.

Total Estimated Burden: 12,000.

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.

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.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2023–05691 Filed 3–20–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 6331–N–10A]

Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: In accordance with the Build America, Buy America Act (''BABA'' or ''the Act'') this notice advises that HUD has issued a public interest waiver of the Buy America Domestic Content Procurement Preference (''Buy America Preference,'' or ''BAP'') for recipients of Federal Financial Assistance (''FFA'') provided by HUD as set forth below. This notice provides a waiver and sets forth an updated implementation schedule for application of the BAP to HUD FFA. HUD is also announcing its BAP implementation schedule for all HUD FFA used to purchase iron or steel products in infrastructure projects in HUD programs, other than the CDBG formula grants addressed in the November 23, 2022, waiver. HUD is also announcing its BAP implementation schedule for the purchase of four specifically-listed construction materials: non-ferrous metals; lumber; composite building materials; and plastic and polymer-based pipe and tube (herein after referred to as ''specifically-listed construction materials''), all manufactured products, and all other construction materials.

DATES: March 15, 2023. This waiver is effective as stated herein for FFA obligated by HUD on or after the effective date of the waiver until the implementation deadlines for the BAP as specifically shown below.

FOR FURTHER INFORMATION CONTACT: Faith Rogers, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10126, Washington, DC 20410–5000, at (202) 402–7082 (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.* HUD encourages submission of questions about this document be sent to *BuildAmericaBuyAmerica@hud.gov.*

SUPPLEMENTARY INFORMATION:

I. Build America, Buy America

The Build America, Buy America Act (''BABA'' or ''the Act'') was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (''IIJA'') (Pub. L. 117–58). The Act establishes a domestic content procurement preference, the BAP, for Federal infrastructure programs. Section 70914(a) of the Act establishes that no later than 180 days after the date of enactment, HUD must ensure that none of the funds made available for infrastructure projects may be obligated by the Department unless it has taken steps to ensure that the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. In section 70912, the Act further defines a project to include ''the construction, alteration, maintenance, or repair of infrastructure in the United States'' and includes within the definition of infrastructure those items traditionally included along with buildings and real property. Thus, starting May 14, 2022, new awards of HUD FFA, and any of those newly obligated funds by HUD then obligated by the grantee for infrastructure projects, are covered under BABA provisions of the Act, 41 U.S.C. 8301 note, unless covered by a waiver.

II. HUD's Progress in Implementation of the Act

Since the enactment of the Act, HUD has worked diligently to implement the BAP. HUD understands that advancing Made in America objectives is a continuous effort and believes this transparent schedule of future implementation will provide industry partners and FFA recipients with the time and notice necessary to efficiently and effectively implement the BAP. HUD's plans to move forward with the implementation of the new BAP requirements as set forth in this notice are designed to maximize coordination and collaboration to support long-term investments in domestic production. HUD will continue its efforts to implement the Act consistent with the guidance and requirements of the Made in America Office of the Office of Management and Budget, including anticipated guidance concerning appropriate compliance with the BAP.

In order to ensure orderly implementation of the BAP across HUD's programs, HUD has provided public interest, general applicability waivers in order to implement the BAP in phases in connection with the application of the BAP across HUD's FFA programs and to provide HUD with sufficient time to solicit information from the public relating to the agency's implementation of the BAP in connection with FFA awards made by HUD. HUD has previously published general applicability, public interest waivers to the BAP to provide the agency with sufficient time to solicit information from the public relating to the agency's implementation of the BAP in connection with FFA awards made by HUD. On November 23, 2022, HUD issued a separate waiver covering all HUD FFA obligated by HUD on or before February 21, 2023, with the exception of the BAP as to the purchase of iron and steel for infrastructure projects funded by Community Development Block Grant (''CDBG'') formula grants on or after November 15, 2022. Separately, HUD waived the application of the BAP in connection with HUD FFA provided to Tribes, Tribally Designated Housing Entities (''TDHE''), and other Tribal Entities (referred to herein as ''Tribal FFA'') to allow time for HUD to complete the Tribal consultation process regarding implementation of the BAP in connection with infrastructure projects. This Notice does not apply to Tribal FFA covered by that separate waiver.[1]

Details on HUD's implementation of the BABA requirements, including two public interest waivers covering Exigent Circumstances and De Minimis and Small Grants and a separate public interest waiver for all Tribal FFA, can be found at *https://www.hud.gov/program_offices/general_counsel/BABA.*

III. Waiver Authority

Under section 70914(b), HUD and other Federal agencies have authority to waive the application of a domestic content procurement preference when (1) application of the preference would be contrary to the public interest, (2) the materials and products subject to the

[1] General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance (Effective until May 14, 2023) address Tribes, Tribally Designated Housing Entities (''TDHE''), and other Tribal Entities' implementation of BABA. (May 5, 2022, 87 FR 26221).

preference are not produced in the United States at a sufficient and reasonably available quantity or satisfactory quality, or (3) inclusion of domestically produced materials and products would increase the cost of the overall project by more than 25 percent. Section 70914(c) provides that a waiver under 70914(b) must be published by the agency with a detailed written explanation for the proposed determination and provide a public comment period of not less than 15 days.

IV. Public Interest, General Applicability Waiver of Buy America Provisions

The Office of Management and Budget's April 18, 2022 memorandum, ''Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure'' (M–22–11), encourages agencies to consider ways to provide the assistance to funding recipients that is necessary and effective for the implementation of the BAP, including consideration of phased implementation of BAP where appropriate. Strategic and phased steps toward full BABA compliance refines the scope for what is exempt from BAP while providing a clear timeline for full implementation, consistent with the Congressional intent and stakeholder interest. It also allows HUD grantees and stakeholders the time needed to construct stronger supply channels to include new or amended vendor contracts that comply with BABA requirements.

In fiscal year 2023, HUD grantees will receive $14 billion through the Department's programs where infrastructure is an eligible activity and may be subject to the BAP. For example, Choice Neighborhoods (''CN'') funds may be used for infrastructure projects (*e.g.,* transform severely distressed public and assisted properties with high-quality mixed-income) or non-infrastructure uses (*e.g.,* business services, safety, children's education and to improve employment, income, and health outcomes). HUD estimates that up to 85 percent of Choice Neighborhoods Implementation Grant funds to be awarded in 2023 ($289 million of $340 million total) will be used on housing and infrastructure projects where the BAP may apply.

As HUD's previous Notices advised and as supported by several comments received during the comment period, many of HUD's programs may be subject to the BAP and have previously not required compliance with similar Buy American preferences. Because the potential application of BAP mandated by the Act is new to the majority of HUD's programs and FFA, HUD chose to implement the BAP first with respect to all iron and steel products used in infrastructure projects funded with HUD FFA on or after November 15, 2022, through its CDBG formula grants.

As required under section 70914 of the Act, HUD published a proposed waiver on its website on February 15, 2023. In addition, HUD published the proposed waiver in the **Federal Register**. Comments on the proposed waiver were due on or before March 2, 2023. Through this Final Notice, HUD is announcing that it has issued this waiver effective March 15, 2023. This waiver is effective as stated herein for FFA obligated by HUD in listed programs on or after the effective date of the waiver until the implementation deadlines for the BAP as specifically shown below. In addition, in the case of FFA obligated by HUD in listed programs on or after February 22, 2023 but prior to the effective date of this Final Waiver, the waiver applies to all expenditures incurred on or after the effective date of the Final Waiver, except for FFA obligated by HUD after the deadline for implementation of the BAP with respect to the purchase of iron or steel products in infrastructure projects in CDBG formula grants, Choice Neighborhood, Lead Hazard Reduction, and Healthy Homes Production Grants.

As such, through this Final Notice, HUD is expanding the application of the BAP to iron and steel products used in infrastructure projects funded with new Choice Neighborhood, Lead Hazard Reduction, and Healthy Homes Production Grants obligated by HUD on or after February 22, 2023. This waiver advances BABA by targeting the next phase of implementation to include Choice Neighborhoods (''CN''), a place-based grant program which helps communities develop and implement locally driven comprehensive plans to transform neighborhoods. In Fiscal Year 2023, HUD received $350 million for CN, which Public Housing Authorities and local jurisdictions apply for competitively. CN provides planning grants, which provide for the development of comprehensive plans, and implementation grants, which allow communities to implement their plans—including for use on infrastructure activities. This allows for efficient phased implementation while reducing the administrative burden to potential grantees and funding recipients where the costs of uncertainties surrounding compliance with BABA could distract from the focus on higher value BABA compliant items. Failure to provide recipients such flexibilities could delay the award for infrastructure projects as grantees and funding recipients must exert considerable effort accounting for the sourcing for miscellaneous, low-cost items.

In connection with Choice Neighborhood grants, HUD is clarifying that this new required application of the BAP in connection with new Choice Neighborhood grants obligated by HUD on or after February 22, 2023, will not extend to supplemental awards obligated by HUD to enable the completion of ongoing, pre-existing projects funded by Choice Neighborhood grants obligated by HUD prior to February 22, 2023. HUD is continuing to waive the application of the BAP in connection with any obligation of supplemental Choice Neighborhood grants because they are merely serving to add additional resources to allow completion of projects well underway with funding obligated prior to the application of the BAP and any application of the BAP at this late stage of the project would be inconsistent with the public interest and could jeopardize completion of those projects. HUD believes that this application is consistent with the intent of the proposed waiver and clarifies that previous awards are not subject to conversion to BAP applicability merely by the addition of minimal funding needed to complete projects funded primarily with previous FFA Choice Neighborhood grant awards.

To focus its efforts on the implementation of the BAP for new FFA obligated by HUD on or after the dates shown below for each of the programs and for the items shown below, HUD is proposing to waive the application of the BAP: (1) as to FFA obligated by HUD and used to purchase iron and steel before the BAP implementation point shown below; (2) as to FFA obligated by HUD and used to purchase specifically-listed construction materials before the BAP implementation point shown below; (3) as to FFA obligated by HUD and used to purchase all construction materials not listed before the BAP implementation point shown below; and (4) as to FFA obligated by HUD and used to purchase any manufactured products before the BAP implementation point shown below. For purposes of HUD FFA, the BAP implementation point shall be the point shown in schedule set forth below. The table's columns describe four separate elements of the BAP and the rows describe various HUD FFA programs. The cells in the table set forth the point at which this waiver expires, and each element of the BAP becomes effective,

for the various HUD FFA programs for each BAP element. Regarding the second column, the specifically listed construction materials under this waiver are: (1) non-ferrous metals; (2) lumber; (3) composite building materials; and (4) plastic and polymer-based pipe and tube. Regarding the two rows that reference new FFA HUD obligates from the appropriations for a particular fiscal year (*i.e.,* CDBG formula grants and RHP grants), except for iron and steel, the waiver will not expire on a single date for the entire program for any element of the BAP; instead, the waiver will remain effective and continue to waive the BAP for any FFA HUD obligates from the appropriations for prior fiscals years for the relevant element, but the waiver will not be effective for any FFA HUD obligates from the appropriations for the fiscal year referenced in the cell and following fiscal years, to which the relevant element of the BAP will apply. The implementation schedule established by HUD in this final waiver is as follows:

	Iron and steel—BAP implementation point	Construction materials—specifically-listed—BAP implementation point	Construction materials—not listed—BAP implementation point	Manufactured products—BAP implementation point
Tribes, Tribally Designated Housing Entities, and Tribal Entities.	Not Addressed in this Notice. See note 1.	Not Addressed in this Notice. See note 1.	Not Addressed in this Notice. See note 1.	Not Addressed in this Notice. See note 1.
CDBG Formula Grants	November 15, 2022—as described in the November 23, 2022 Final Waiver.	As of the date HUD obligates new FFA from Fiscal Year 2024 appropriations.	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations.	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations.
Choice Neighborhood, Lead Hazard Reduction, and Healthy Homes Production Grants.	New FFA obligated by HUD on or after February 22, 2023.	New FFA obligated by HUD on or after August 23, 2024.	New FFA obligated by HUD on or after August 23, 2024.	New FFA obligated by HUD on or after August 23, 2024.
Recovery Housing Program (“RHP”) Grants.	New FFA obligated by HUD on or after August 23, 2023.	As of the date HUD obligates new FFA from Fiscal Year 2024 appropriations.	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations.	As of the date HUD obligates new FFA from Fiscal Year 2025 appropriations.
All other HUD FFA except HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects.	New FFA obligated by HUD on or after February 22, 2024.	New FFA obligated by HUD on or after August 23, 2024.	New FFA obligated by HUD on or after August 23, 2024.	New FFA obligated by HUD on or after August 23, 2024.
HOME, Housing Trust Fund, and Public Housing FFA used for maintenance projects.	New FFA obligated by HUD on or after August 23, 2024.	New FFA obligated by HUD on or after August 23, 2024.	New FFA obligated by HUD on or after August 23, 2024.	New FFA obligated by HUD on or after August 23, 2024.

This phased implementation of the BAP advances the goals of BABA by providing transparency in HUD's implementation of the BAP, reducing the administrative burden to potential assistance recipients where the costs of uncertainty in compliance with BABA could distract from the focus on the efficient and effective implementation of BABA in an orderly and efficient manner, and provides transparency concerning the full implementation plans in connection with HUD FFA used in infrastructure projects. Failure to provide recipients such flexibilities and transparency could delay the award for infrastructure projects as grantees and funding recipients must exert considerable effort in changing their plans and accounting for the sourcing of materials in construction projects without the benefit of complete guidance on the Act's requirements.

Additionally, HUD believes that this coordination in the implementation of BABA will avoid unnecessary and undue hardship that could jeopardize the timely and cost-effective completion of such projects as grantees and funding recipients that have previously not been subject to requirements similar to BAP react to anticipated guidance on how to come into full compliance. This implementation schedule and corresponding waiver allows grantees and funding recipients to focus their efforts in beginning the implementation of the BAP and allows HUD to focus its training and technical assistance on those grantees beginning the implementation process. This waiver is not an alternative to increasing domestic production, but rather serves as a tool to assist HUD in its implementation of the Buy American provisions in the most efficient manner in order to promote investment in HUD's domestic manufacturing base, strengthen critical supply chains, and position United States workers and businesses to compete and lead globally in the 21st century. The implementation schedule is designed to ensure that domestic manufacturers have sufficient time to become aware of and respond to the market signals from HUD recipients that additional BABA compliant construction materials and manufactured products will be in demand. This waiver is in the interest of efficiency, to ease burdens for HUD grantees and funding recipients, avoid unnecessary costs, and avoid delays to projects that are critical and time sensitive. This waiver allows HUD to focus, particularly in the early phases of BABA implementation, on key products and critical supply chains where increased U.S. manufacturing can best advance our economic and national security. This waiver allows grantees and funding recipients to continue with projects in connection with iron and steel products where Made in America requirements have long been contemplated—providing greater ease of implementation for HUD's grantees. Without this waiver, HUD could lose grantee and funding recipient participation, be exposed to liabilities if HUD forces grantees and funding recipients to modify their current plans to come into compliance, or delay critical activities to protect life, safety and property, and could negatively impact the most vulnerable Americans we seek to serve.

V. Public Comments on the Waiver

As required under section 70914 of the Act, HUD solicited comment from the public on the public interest waiver announced in this Notice on its website

and then published the proposed waiver in the **Federal Register**. A total of 16 comments were received in response to the proposed waiver and implementation plan. HUD thoroughly reviewed and considered each of the comments in determining to move forward with the issuance of this waiver and implementation plan as published in this Final Notice. Several commenters were supportive of the orderly implementation of the BAP but requested further time and guidance prior to proceeding with such implementation. A few commenters again expressed support for a waiver of broader scope that could potentially exclude all affordable single and multifamily housing programs from the requirements of BABA. Additional commenters requested further delays in the implementation schedule, citing resource constraints and cost uncertainties in support of further delays in implementation. Other commenters expressed concern that the agency is not moving forward with the full implementation of the BAP across all programs immediately.

HUD appreciates the comments from both perspectives, but given the totality of the comments, believes its implementation schedule and corresponding waiver of the application of the BAP as set forth in this Final Notice is appropriate and in the public interest.[2]

HUD has expressed its desire to move forward with the full implementation of the BAP across its FFA programs, but believes that the public interest is served best by a measured approach to implementation of the Act, allowing for the appropriate balancing of the intent of the Act with the public interest in the continued efficiency and success of infrastructure projects funded through HUD's affordable housing and community development programs. HUD therefore declines to alter the proposed phased implementation plan and corresponding waiver at this time, but is taking this opportunity to clarify that the application of the BAP for iron and steel will apply to new awards of FFA in connection with Choice Neighborhood grants and will not retroactively convert ongoing projects to required compliance with the BAP merely because additional supplemental funding awards have been made to facilitate orderly completion of those ongoing projects. HUD will continue to monitor the implementation of the BAP across its programs to ensure the most robust application possible in light of the important public interests discussed above.

Several proponents of the waiver requested that HUD provide further guidance regarding the implementation of the BAP and HUD commits to developing robust guidance regarding the implementation of the BAP across its programs. HUD further recognizes that proposed guidance [3] has been issued by the Office of Management and Budget (OMB) concerning the implementation of BABA across FFA programs and will continue to monitor the outcome of the proposed effort to update OMB's guidance in connection with the development of its own guidance for grantees and funding recipients. HUD remains committed to reviewing its plans to provide for the effective and efficient implementation of the Act across its programs and providing timely and appropriate guidance but believes that further extension of its waiver of application of the BAP beyond the implementation points provided in this Final Notice is not necessary at this time.

VI. Impact of This Waiver on Other FFA

HUD will not require compliance with the BAP in connection with the use of any HUD FFA obligated by HUD before November 14, 2022, or during the pendency of any other applicable BABA waiver issued by HUD, including this waiver, as applicable, after it is finalized. However, where the BAP or other ''Buy American'' requirements are made applicable to a project of a grantee or funding recipient by another Federal agency, those requirements are not waived by this waiver, nor is the grantee or funding recipient exempt from the application of those requirements in accordance with the requirements of the Federal agency providing such FFA.

VII. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M–22–11, ''Memorandum for Heads of Executive Departments and Agencies,'' published on April 18, 2022, agencies are expected to assess ''whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products'' as appropriate before granting a public interest waiver. HUD's analysis has concluded that this assessment is not applicable to this waiver, as this waiver is not based in the cost of foreign-sourced products. HUD will perform additional market research during the waiver period to better understand the market and to limit the use of waivers caused by dumping of foreign-sourced products.

Marcia L. Fudge,

Secretary.

[FR Doc. 2023–05698 Filed 3–20–23; 8:45 am]

BILLING CODE 4210–67–P

[2] HUD has and will continue to provide training sessions with grantees to increase grantees' knowledge about Build America, Buy America and the Buy America Preference requirements as they relate to HUD programs and HUD FFA used by Non-Federal entities to purchase iron and steel, construction materials, and manufactured products to be used infrastructure projects.

[3] *Regulations.gov.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.: FR–7077–N–07]

Privacy Act of 1974; System of Records

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Under the Privacy Act of 1974, as amended, the U.S. Department of Housing and Urban Development (HUD), Office of Public and Indian Housing (PIH) gives notice of its intent to modify a system of records notice (SORN): Inventory Management System, also known as the Public and Indian Housing Information Center (IMS/PIC), to add two routine uses to the Routine Use section published in the **Federal Register** on March 25, 2019 and update the name of the system manager.

DATES: Comments will be accepted on or before April 20, 2023. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by one of these methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: privacy@hud.gov.

Mail: Attention: Privacy Office; Mr. Ladonne White, Chief Privacy Officer, Office of the Executive Secretariat; 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://*

www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: LaDonne White, 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001, telephone number 202–708–3054. 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.*

SUPPLEMENTARY INFORMATION: HUD PIH maintains the IMS/PIC System. IMS/PIC serves as a national repository of information related to Public Housing Authorities (PHAs), HUD-assisted families, and HUD-assisted properties, to provide rental assistance, information sharing, monitoring, and evaluating the effectiveness of PIH programs and subsidies. HUD is publishing this revised notice to add two new routine uses to the Routine Uses section to the SORN published in the **Federal Register** on March 25, 2019, at 84 FR 11117. The two new additions to the Routine Uses section allow for sharing of data with Universal Service Administrative Company (USAC)/Federal Communications Commission (FCC) to establish eligibility for benefits administered by USAC for families which also participate in a HUD rental assistance program, and to any Federal, State, or local agency to verify the accuracy and completeness of the eligibility data for HUD rental assistance program. The changes also include an update to the name of the system manager from Donald J. Lavoy to Ashley Sheriff.

SYSTEM NAME AND NUMBER:

Inventory Management System, Public and Indian Housing Information Center (IMS/PIC), HUD/PIH.01.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The files are maintained at these locations: U.S. Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; and IMS/PIC servers are in Charleston, WV; and are accessed through the internet. The servers are maintained by HUD Information Technology Services (HITS) contractor, and HUD's information technology partners: Perspecta. 15052 Conference Center Drive, Chantilly, VA 20151.

SYSTEM MANAGER(S):

Ashley Sheriff, Deputy Assistant Secretary, Real Estate Assessment Center (REAC), 550 12th Street SW, Suite 100, Washington, DC 20410. 202–475–7949. IMS/PIC, HUD/PIH.01.

* * * * *

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

* * * * *

14. To the Universal Service Administrative Company (USAC), which is designated by the Federal Communications Commission (FCC) as the Federal administrator of the Universal Service Fund (USF or Fund) Lifeline Program (Lifeline), the Emergency Broadband Benefit (EBB) program and other Federal Telecommunications Benefit (FTB) programs that utilizes Lifeline eligibility criteria as specified by the Lifeline program, 47 CFR 54.409. The purpose of this routine use is to establish eligibility for the Lifeline, EBB and other FTB programs for families which also participate in a HUD rental assistance program.

15. To any Federal, State, or local agency (*e.g.,* state agencies administering the State's unemployment compensation laws, Temporary Assistance to Needy Families, or Supplemental Nutrition Assistance Program agencies, U.S. Department of Health and Human Services, and U.S. Social Security Administration): To verify the accuracy and completeness of the data provided, to verify eligibility or continued eligibility in HUD's rental assistance programs, to identify and recover improper payments under the Payment Integrity Information Act of 2019, Public Law 116–117, and to aid in the identification of tenant errors, fraud, and abuse in assisted housing programs.

* * * * *

HISTORY:

The most recent prior IMS/PIC SORN was published in the **Federal Register** on March 25, 2019, at 84 FR 11117.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2023–05748 Filed 3–20–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO500167446]

Notice of Segregation of Public Land for the Mosey Solar Project, Clark and Nye Counties, Nevada

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice.

SUMMARY: Through this notice the Bureau of Land Management (BLM) is segregating public lands included in the right-of-way application for the Mosey Solar Project from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years from the date of publication of this notice, subject to valid existing rights. This segregation is to allow for the orderly administration of the public lands to facilitate consideration of development of renewable energy resources. The public lands segregated by this notice total 5,281.41 acres.

DATES: This segregation for the lands identified in this notice is effective on March 21, 2023.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, send requests to: Jessica Headen, Southern Nevada District Energy & Infrastructure Team, at telephone 702–515–5206; address 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301; or email *BLM_NV_SND_EnergyProjects@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Regulations found at 43 CFR 2091.3–1(e) and 2804.25(f) allow the BLM to temporarily segregate public lands within a right-of-way application area for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a **Federal Register** notice. The BLM uses this temporary segregation authority to preserve its ability to approve, approve with modifications, or deny proposed rights-of-way, and to facilitate the orderly administration of the public lands. This temporary segregation is subject to valid

existing rights, including existing mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregation period. The lands segregated under this notice are legally described as follows:

Mount Diablo Meridian, Nevada

T. 22 S., R. 54 E.,
secs. 11, 12, and 13;
sec. 14, NE¼;
sec. 24, lot 1, W½NE¼, and E½NW¼.
T. 21 S., R. 55 E.,
sec. 31;
sec. 32, N½ and SW¼;
sec. 33, N½;
sec. 34, N½ and SE¼;
sec. 35, SW¼NW¼SW¼ and W½SW¼SW¼.
T. 22 S., R. 55 E.,
sec. 2, lot 4 and W½SW¼NW¼;
sec. 3, lot 1 and E½SE¼NE¼;
sec. 6;
sec. 7, lots 1 and 2, NE¼, and E½NW¼.

The area described contains 5,281.41 acres, according to the official plats of the surveys of the said lands on file with BLM.

As provided in the regulations, the segregation of lands in this notice will not exceed 2 years from the date of publication unless extended for an additional 2 years through publication of a new notice in the **Federal Register**. The segregation period will terminate and the land will automatically reopen to appropriation under the public land laws, including the mining laws, at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way; without further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation; or upon publication of a **Federal Register** notice terminating the segregation.

Upon termination of the segregation of these lands, all lands subject to this segregation would automatically reopen to appropriation under the public land laws, including the mining laws.

(Authority: 43 CFR 2091.3–1(e) and 43 CFR 2804.25(f))

Stephen Leslie,

Acting Field Manager, Pahrump Field Office.

[FR Doc. 2023–05726 Filed 3–20–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT924000–L14400000–ET0000; SDM–112598]

Notice of Application for Withdrawal and Notification of Public Meeting, Pactola Reservoir—Rapid Creek Watershed; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of withdrawal application.

SUMMARY: The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior withdraw 20,574 acres of National Forest System (NFS) lands in Pennington County, South Dakota, from settlement, sale, location, or entry under the public land laws; location and entry under the United States mining laws; and leasing under the mineral and geothermal leasing laws for 20 years, subject to valid existing rights, to protect the cultural and natural resources of the Pactola Reservoir—Rapid Creek Watershed, including municipal water for Rapid City and Ellsworth Air Force Base, from the adverse impacts of minerals exploration and development. Publication of this notice segregates the lands from the laws specified for up to 2 years, subject to valid existing rights. This notice initiates a 90-day public comment period and announces a public meeting regarding the USFS application.

DATES: Comments must be received by June 20, 2023. The USFS and the BLM will hold a joint public meeting on Wednesday, April 26, 2023, 4–8 p.m., Mountain Time (MT), at the Best Western Ramkota Hotel, Conference Hall, 2111 N. LaCrosse Street, Rapid City, South Dakota 57701.

ADDRESSES: Written comments should be submitted to: Black Hills National Forest via *https://cara.fs2c.usda.gov/Public/CommentInput?project=NP-3479.* Information regarding the proposed withdrawal will be available at the Black Hills National Forest, Forest Supervisor's Office, 1019 N. 5th Street, Custer, South Dakota 57730 and at the BLM Montana/Dakotas State Office, 5001 Southgate Drive, Billings, Montana 59101. Comments sent by email will not be accepted.

FOR FURTHER INFORMATION CONTACT: Bryan Karchut, Forest Supervisor, Black Hills National Forest, telephone (605) 515–9861, email: *bryan.karchut@usda.gov,* or you may contact the BLM office at the address noted earlier. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) 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 withdrawal application includes the following NFS lands located in the Black Hills National Forest:

Black Hills Meridian, South Dakota

T. 1 N., R. 4 E.,
Sec. 1;
Sec. 2, that part lying easterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 11, that part lying easterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Secs. 12 and 13;
Sec. 14, that part lying easterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 23, that part lying northeasterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 24, that part lying northeasterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 25, that part lying northeasterly of Pactola Reservoir—Rapid Creek subwatershed boundary.
T. 2 N., R. 4 E.,
Sec. 13, lots 1 thru 5, SW1/4SW1/4, and SE1/4, except Tract A of H.E.S. No. 241, that part lying southerly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 14, lot 2, SW1/4, W1/2SE1/4, and SE1/4SE1/4, that part lying southeasterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 22, SE1/4SE1/4, those portions lying southerly and easterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 23, that part lying easterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 24, except Tract A of H.E.S. No. 241;
Sec. 25, except M.S. No. 1948 and M.S. No. 2016;
Sec. 26, that part lying easterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 27, those portions lying easterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 34, lots 1, 4, 6, and 9, E1/2NE1/4, NW1/4NE1/4, and S1/2SE1/4SE1/4, that part lying easterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 35, except M.S. No. 2047, that part lying northeasterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 36, except M.S. No. 1948;

M.S. No. 1019, that part lying southerly of Pactola Reservoir—Rapid Creek subwatershed boundary;
M.S. No. 2047.
T. 1 N., R. 5 E.,
Sec. 2, that part lying southwesterly of Pactola Reservoir—Rapid Creek subwatershed boundary;
Secs. 3 thru 7;
Sec. 8, except M.S. No. 1918;
Secs. 9 and 10;
Sec. 11, that part lying northwesterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 14, that part lying northwesterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 15, N1/2, N1/2SW1/4, N1/2SE1/4, and NE1/4NE1/4SW1/4SE1/4, that part lying northerly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 16, that part lying northwesterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 17, except M.S. Nos. 1916 and 1918;
Sec. 18, N1/2, NE1/4SW1/4, and SE1/4;
Sec. 19, NE1/4, NW1/4NW1/4, S1/2NW1/4, S1/2, that part lying northwesterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 20, except M.S. No. 1916, that part lying northerly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 21, NW1/4, that part lying northwesterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 30, W1/2, that part lying northwesterly of the Pactola Reservoir—Rapid Creek subwatershed boundary.
H.E.S. No. 106;
H.E.S. No. 599;
M.S. No. 891.
T. 2 N., R. 5 E.,
Sec. 18, that part lying southerly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 19, that part lying southwesterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 20, SW1/4, that part lying southwesterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 28, SW1/4, that part lying southerly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 29, that part lying westerly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 30, except M.S. No. 1948 and M.S. No. 2016;
Sec. 31, lots 5 and 6, lots 10 thru 19, NE1/4, E1/2NW1/4, NW1/4NE1/4SE1/4, W1/2SE1/4SE1/4SE1/4, and those portions of M.S. No. 504 further described as Town of Silver City, Blocks A, B, C, D, and E, lots 3 thru 16 and lots 23 thru 32 of Block 9, lots 4 and 5, lots 12 thru 15, lots 27 thru 30 of Block 12, and Blocks 19 and 20;
Sec. 32, except M.S. No. 2040, that part lying southwesterly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 33, that part lying southerly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 34, that part lying southerly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
Sec. 35, those portions lying westerly of the Pactola Reservoir—Rapid Creek subwatershed boundary;
M.S. No 2040, except W1/2SE1/4SE1/4SE1/4 of sec. 31.

The Pactola Reservoir—Rapid Creek subwatershed boundary described within this land description was derived from GIS and used for convenience in computing acreage. This subwatershed is also known as Hydrological Unit Code (HUC) 101201100110. This land description intends to include all public lands administered by the USFS within this subwatershed. The actual boundary is intended to be the location of said subwatershed as it exists on the ground.

The areas described aggregate approximately 20,574 acres.

The purpose for the withdrawal requested by the USFS is to protect the cultural and natural resources of the Pactola Reservoir—Rapid Creek Watershed, including municipal water for Rapid City and Ellsworth Air Force Base, from the adverse impacts of minerals exploration and development.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection of cultural and natural resources.

No additional water rights will be needed to fulfill the purpose of the requested withdrawal.

There are no suitable alternative sites, as the described lands contain the resource values that need protection.

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.

Notice is hereby given that the USFS and the BLM will hold a joint public meeting in connection with the withdrawal application on Wednesday, April 26, 2023, from 4–8 p.m. MT, at the Best Western Ramkota Hotel, Conference Hall, 2111 N. LaCrosse St., Rapid City, SD 57701. The USFS will publish a notice of the time and place in a local newspaper at least 30 days before the scheduled date of the meeting. During the 90-day comment period, the BLM and USFS will hold additional meetings in other areas of the State, notices of which will be provided in local newspapers or on agency websites.

For a period until March 21, 2025, the NFS lands described earlier will be segregated from settlement, sale, location, or entry under the public land laws, location and entry under the United States mining laws, and leasing under the mineral and geothermal leasing laws, subject to valid existing rights, unless the application is denied or canceled, or the withdrawal is approved prior to that date.

Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature may be allowed with the approval of the authorized officer of the USFS during the temporary segregation period if they would comply with applicable USFS land use plans for public lands and NFS lands located within the requested withdrawal boundary.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

(Authority: 43 U.S.C. 1714)

Kimberly O. Prill,

Acting Montana/Dakotas State Director.

[FR Doc. 2023–05659 Filed 3–20–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035481; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items Amendment: California Department of Parks and Recreation, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California Department of Parks and Recreation has amended a Notice of Intent to Repatriate published in the **Federal Register** on December 24, 2002. This notice amends the cultural affiliation for a collection removed from Lake County, California.

DATES: Repatriation of the cultural items in this notice may occur on or after April 20, 2023.

ADDRESSES: Dr. Leslie L. Hartzell, NAGPRA Coordinator, California Department of Parks and Recreation, P.O. Box 942896, Sacramento, CA 94296–0001, telephone (916) 653–5910, email *Leslie.Hartzell@parks.ca.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the

National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California Department of Parks and Recreation. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the summary or related records held by the California Department of Parks and Recreation.

Amendment

This notice amends the determinations published in a Notice of Intent to Repatriate in the **Federal Register** (67 FR 78508, December 24, 2002). Repatriation of the items in the original Notice of Intent to Repatriate has not occurred. After the original notice was published, a request for the repatriation of the sacred objects listed in the notice was made by an individual claiming to be the direct lineal descendant of the individual who owned the sacred objects, and a preponderance of evidence supports this request.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the California Department of Parks and Recreation has determined that:

- The 59 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items in this notice and Robert Geary, a lineal descendant.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after April 20, 2023. If competing requests for repatriation are received, the California Department of Parks and Recreation must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The California Department of Parks and Recreation is responsible for sending a copy of this notice to the lineal descendant identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, 10.13, and 10.14.

Dated: March 15, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–05727 Filed 3–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035513; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: C.H. Nash Memorial Museum/Chucalissa Archaeological Museum, University of Memphis, Memphis, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The C.H. Nash Memorial Museum/Chucalissa Archaeological Museum (Nash Museum) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Nash Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Nash Museum at the address in this notice by April 20, 2023.

FOR FURTHER INFORMATION CONTACT: Melissa Buchner, C.H. Nash Memorial Museum/Chucalissa Archaeological Museum, University of Memphis, 1987 Indian Village Drive, Memphis, TN 38109, telephone (901) 785–3160, email *chucalissa@memphis.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the C.H. Nash Memorial Museum/Chucalissa Archaeological Museum, University of Memphis, Memphis, TN. The human remains and associated funerary objects were removed from the Chucalissa site (40SY1) in Shelby County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Nash Museum professional staff in consultation with representatives of the Eastern Band of Cherokee Indians; Quapaw Nation (*previously* listed as The Quapaw Tribe of Indians); The Chickasaw Nation; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In 1964, human remains representing, at minimum, four individuals were removed from Unit 1 of the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were excavated by Nash Museum staff. The human remains (40SY1–1/B–1, 40SY1–1/B–2, 40SY1–1/639, 40SY1–1/NC–1) belong to one female adult; one subadult of unknown sex; and two individuals of unknown age and sex. No known individuals were identified. The 40 associated funerary objects include one whole ceramic vessel, one ceramic vessel section, four lithics, five miscellaneous animal bone fragments, 18 ceramic sherds, 10 pieces of daub, and one piece of charcoal.

Between 1955 and 1974, human remains representing, at minimum, 20 individuals were removed from Unit 2 of the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were excavated by C.H. Nash Museum at Chucalissa staff. The human remains (40SY1–2/B–1, 40SY1–2/B–2, 40SY1–2/B–3, 40SY1–2/B–3A, 40SY1–2/B–4, 40SY1–2/B–5, 40SY1–2/B–6, 40SY1–2/B–7, 40SY1–2/B–8, 40SY1–2/B–9, 40SY1–2/B–10, 40SY1–2/B–11, 40SY1–2/B–12, 40SY1–2/B–13, 40SY1–2/B–14, 40SY1–2/B–15, 40SY1–2/69, 40SY1–2/110–1, 40SY1–2/NC–1) belong to five female adults; four male adults; nine subadults of unknown sex; and two individuals of unknown age and sex. No known individuals were identified. The 121 associated funerary objects include seven whole ceramic vessels, four ceramic vessel sections, one abrader, 19 ceramic sherds, one sample of carbonized corn cobs, two pebbles, 30 pieces of daub, 56 miscellaneous animal bone fragments, and one piece of iron-oxide sandstone.

The Chucalissa site (40SY1) was occupied during the Mississippian period (ca. 1000—1550 C.E.). Although the cultural affiliation of prehistoric inhabitants of the area is unknown, the Unit 1 (40SY1–1) and Unit 2 (40SY1–2) burials and associated funerary objects date to the Walls Phase occupation of the site (ca. 1400—1540 C.E.). Archeological and anthropological evidence support a cultural affiliation of the Quapaw with late precontact and early post contact polities in the northern Lower Mississippi Valley. The cultural affiliation of the human remains and associated funerary objects from the Chucalissa site (40SY1) with the Quapaw Nation is also supported by material cultural, ethnohistoric, and linguistic evidence.

Beginning in 1955, and later, during museum construction projects in the 1960s through the 1980s, human remains representing, at minimum, 94 individuals were removed from Unit 3 of the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were excavated by Nash Museum staff. The human remains (40SY1–3/B–1, 40SY1–3/B–4, 40SY1–3/B–6, 40SY1–3/B–7, 40SY1–3/B–8, 40SY1–3/B–9, 40SY1–3/B–10, 40SY1–3/B–11, 40SY1–3/B–14, 40SY1–3/B–15, 40SY1–3/B–16, 40SY1–3/B–17, 40SY1–3/B–18, 40SY1–3/B–19, 40SY1–3/B–20, 40SY1–3/B–21, 40SY1–3/B–22, 40SY1–3/B–23, 40SY1–3/B–24, 40SY1–3/B–24B, 40SY1–3/B–25, 40SY1–3/B–26A, 40SY1–3/B–26B, 40SY1–3/B–27, 40SY1–3/B–30, 40SY1–3/B–31, 40SY1–3/B–32, 40SY1–3/B–33, 40SY1–3/B–34, 40SY1–3/B–35, 40SY1–3/B–36, 40SY1–3/B–37, 40SY1–3/B–38, 40SY1–3/B–39, 40SY1–3/B–40, 40SY1–3/B–41, 40SY1–3/B–42A, 40SY1–3/B–42B, 40SY1–3/B–43, 40SY1–3/B–44, 40SY1–3/B–45, 40SY1–3/B–46, 40SY1–3/B–47, 40SY1–3/B–48, 40SY1–3/B–49, 40SY1–3/B–50, 40SY1–3/B–51, 40SY1–3/B–52, 40SY1–3/B–53,40SY1–3/B–54, 40SY1–3/B–55, 40SY1–3/B–56, 40SY1–3/B–57, 40SY1–3/B–59, 40SY1–3/B–60, 40SY1–3/B–61, 40SY1–3/B–62, 40SY1–3/B–63, 40SY1–3/B–64, 40SY1–3/B–65, 40SY1–3/B–66, 40SY1–3/B–67, 40SY1–3/B–68, 40SY1–3/B–69, 40SY1–3/B–71, 40SY1–3/B–72, 40SY1–3/B–73, 40SY1–3/B–73A, 40SY1–3/B–73B, 40SY1–3/B–73C, 40SY1–3/B–74, 40SY1–3/B–75, 40SY1–3/508–1, 40SY1–3/531, 40SY1–3/573, 40SY1–3/574, 40SY1–3/575, 40SY1–3/576, 40SY1–3/577, 40SY1–3/666–1, 40SY1–3/1283, 40SY1–3/1354, 40SY1–3/NC–1, 40SY1–3/NC–2, 40SY1–3/NC–3, 40SY1–3/NC–4, 40SY1–3/NC–5) belong to 21 female adults; 17 male adults; nine adults of unknown sex; 39 subadults of unknown sex; and eight individuals of unknown age and sex. No known individuals were identified. The 144 associated funerary objects include 29 ceramic vessels, three ceramic vessel sections, one stone projectile point, two shell earplugs, two shell gorgets, three shell beads, six mussel shell spoon fragments, one vial of hematite, three bone awls, one worked animal bone, one stone biface, one fossilized marine shell, one antler tine, 11 antler tine projectile points, 26 ceramic sherds, 17 miscellaneous animal bone fragments, seven fish bones, three unidentified artifacts, 13 pieces of daub, one piece of concretion, one bag of burial fill, one replica shell gorget, four replica shell earplug fragments, one piece of limonite, two pieces of chert, one lithic, one turtle carapace fragment, and one burned animal bone fragment.

Between 1957 and 1981, human remains representing, at minimum, 100 individuals were removed from Unit 6 of the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were excavated by the Tennessee Department of Conservation and Nash Museum staff. The human remains (40SY1–6/B–1, 40SY1–5/B–2A–B, 40SY1–6/B–3, 40SY1–6/B–4, 40SY1–6/B–5, 40SY1–6/B–6, 40SY1–6/B–7, 40SY1–6/B–8, 40SY1–6/B–9, 40SY1–6/B–10, 40SY1–6/B–11, 40SY1–6/B–12, 40SY1–6/B–13, 40SY1–6/B–14, 40SY1–6/B–15, 40SY1–6/B–16, 40SY1–6/B–17A–B, 40SY1–6/B–18, 40SY1–6/B–19, 40SY1–6/B–20, 40SY1–6/B–21, 40SY1–6/B–22, 40SY1–6/B–23, 40SY1–6/B–24, 40SY1–6/B–25, 40SY1–6/B–26, 40SY1–6/B–27, 40SY1–6/B–28, 40SY1–6/B–29, 40SY1–6/B–30, 40SY1–6/B–31, 40SY1–6/B–32, 40SY1–6/B–33, 40SY1–6/B–34, 40SY1–6/B–35, 40SY1–6/B–36, 40SY1–6/B–38, 40SY1–6/B39, 40SY1–6/B–40, 40SY1–6/B–41, 40SY1–6/B–42, 40SY1–6/B–43, 40SY1–6/B–44, 40SY1–6/B–45, 40SY1–6/B–46, 40SY1–6/B–46B, 40SY1–6/B–47, 40SY1–6/B–48, 40SY1–6/B–49, 40SY1–6/B–50, 40SY1–6/B–51, 40SY1–6/B–51A, 40SY1-/B–51B, 40SY1–6/B–52, 40SY1–6/B–53, 40SY1–6/B–54, 40SY1–6/B–55, 40SY1–6/B–56, 40SY1–6/B–57, 40SY1–6/B–58, 40SY1–6/B–59, 40SY1–6/B–60, 40SY1–6/B–60B, 40SY1–6/B–61, 40SY1–6/B–62, 40SY1–6/B–63, 40SY1–6/B–64, 40SY1–6/B–65, 40SY1–6/B–66, 40SY1–6/B–67, 40SY1–6/B–68, 40SY1–6/B–69, 40SY1–6/B–70, 40SY1–6/B–71, 40SY1–6/B–72, 40SY1–6/B–73, 40SY1–6/56A, 40SY1–6/391A, 40SY1–6/391B, 40SY1–6/391C, 40SY1–6/512, 40SY1–6/1636–1, 40SY1–6/2402, 40SY1–6/2403, 40SY1–6/2404, 40SY1–6/4224, 40SY1–6/4468, 40SY1–6/4487, 40SY1–6/5103, 40SY1–6/5775, 40SY1–6/6345, 40SY1–6/6548, 40SY1–6/NC–1) belong to 20 female adults; 19 male adults; 10 adults of unknown sex; 37 subadults of unknown sex; and 14 individuals of unknown age and sex. No known individuals were identified. The 357 associated funerary objects are 12 whole ceramic vessels, 10 ceramic vessel sections, seven crinoid stem beads, one bone awl, one stone projectile point, 74 lots of miscellaneous animal bone fragments, one animal tooth, one gar scale, one abrader, one piece of limonite, 13 pottery sherds, one ceramic disc, seven mussel shell fragments, one complete mussel shell, one mussel shell disc, 64 lots of daub, 122 lots of daub/fired clay, 16 pieces of fired clay, nine pieces of fired clay/dirt, one broken rock, four pebbles, two lithics, two soil samples, and five pieces of charcoal.

The Chucalissa site (40SY1) was occupied during the Mississippian period (ca. 1000–1550 C.E.). Although the cultural affiliation of prehistoric inhabitants of the area is unknown, most of the Unit 3 (40SY1–3) and Unit 6 (40SY1–6) human remains and associated funerary objects date to the Boxtown Phase (ca. 1250–1400 C.E.) or Walls Phase (ca. 1400–1540 C.E.); some burials and associated funerary objects were recovered from Stratum IV, where evidence indicates an earlier occupation phase, such as Mitchell or Ensley (ca. 900–1250 C.E. and pre-900 C.E.). Archeological and anthropological evidence support a cultural affiliation of the Quapaw with late precontact and early post contact polities in the northern Lower Mississippi Valley. The cultural affiliation of the human remains and associated funerary objects

from the Chucalissa site (40SY1) with the Quapaw Nation is also supported by material cultural, ethnohistoric, and linguistic evidence.

Between 1959 and 1967, human remains representing, at minimum, 108 individuals were removed from Unit 4 of the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were excavated by the Tennessee Department of Conservation and Nash Museum staff. The human remains (40SY1–4/B–1, 40SY1–4/B–1 NC, 40SY1–4/B–2, 40SY1–4/B–2 NC, 40SY1–4/B–3, 40SY1–4/B–3 NC, 40SY1–4/B–4, 40SY1–4/B–4 NC, 40SY1–4/B–5, 40SY1–4/B–5 NC, 40SY1–4/B–6, 40SY1–4/B–6 NC, 40SY1–4/B–7, 40SY1–4/B–7 NC, 40SY1–4/B–8, 40SY1–4/B–10A, 40SY1–4/B–10B, 40SY1–4/B–11, 40SY1–4/B–11 NC, 40SY1–4/B–12, 40SY1–4/T–1, 40SY1–4/T–2, 40SY1–4/T–3, 40SY1–4/T–4, 40SY1–4/22, 40SY1–4/34, 40SY1–4/53, 40SY1–4/54, 40SY1–4/56, 40SY1–4/57, 40SY1–4/58, 40SY1–4/60, 40SY1–4/69, 40SY1–4/70, 40SY1–4/71, 40SY1–4/72, 40SY1–4/73, 40SY1–4/74, 40SY1–4/75, 40SY1–4/78, 40SY1–4/79, 40SY1–4/80, 40SY1–4/81, 40SY1–4/83, 40SY1–4/84, 40SY1–4/86, 40SY1–4/87–2, 40SY1–4/90, 40SY1–4/92, 40SY1–4/95, 40SY1–4/101, 40SY1–4/102, 40SY1–4/103, 40SY1–4/117, 40SY1–4/122, 40SY1–4/124, 40SY1–4/125, 40SY1–4/132c, 40SY1–4/134, 40SY1–4/139, 40SY1–4/142, 40SY1–4/146, 40SY1–4/147, 40SY1–4/148, 40SY1–4/149, 40SY1–4/151, 40SY1–4/153, 40SY1–4/154, 40SY1–4/155, 40SY1–4/156, 40SY1–4/NC–2, 40SY1–4/NC–3) belong to three female adults; 11 male adults; 73 adults of unknown sex; five subadults of unknown sex; and 16 individuals of unknown age and sex. No known individuals were identified. The 10 associated funerary objects include two bone awls, two antler flakers, two pieces of hematite, one ceramic disc, and three turtle shell fragments.

The Chucalissa site (40SY1) was occupied during the Mississippian period (ca. 1000–1550 C.E.). Although the cultural affiliation of prehistoric inhabitants of the area is unknown, the archeological evidence from the Unit 4 (40SY1–4) human remains and associated funerary objects indicates a date range beginning with the Late Woodland and Mississippi periods/Ensley phase (*i.e.,* pre-900 C.E.) and continuing through the Mitchell (ca. 900–1250 C.E.), Boxtown (ca. 1250–1400), and Walls (ca. 1250–1540 C.E.) phases. Archeological and anthropological evidence support a cultural affiliation of the Quapaw with late precontact and early post contact polities in the northern Lower Mississippi Valley. The cultural affiliation of the human remains and associated funerary objects from the Chucalissa site (40SY1) with the Quapaw Nation is also supported by material cultural, ethnohistoric, and linguistic evidence.

Between 1959 and 1972, human remains representing, at minimum, eight individuals were removed from Unit 5 of the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were excavated by the Tennessee Department of Conservation and Nash Museum staff. The human remains (40SY1–5/B–1, 40SY1–5/100, 40SY1–5/585–1, 40SY1–5/593–1, 40SY1–5/748A, 40SY1–5/753B, 40SY1–5/1144–1, 40SY1–5/1266) belong to one female adult; six adults of unknown sex; and one individual of unknown age and sex. No known individuals were identified. The one associated funerary object is a ceramic bottle.

The Chucalissa site (40SY1) was occupied during the Mississippian period (ca. 1000–1550 C.E.). Although the cultural affiliation of prehistoric inhabitants of the area is unknown, the datable Unit 5 (40SY1–5) burials and associated funerary objects belong to the Walls Phase (ca. 1250–1540 C.E.). Archeological and anthropological evidence support a cultural affiliation of the Quapaw with late precontact and early post contact polities in the northern Lower Mississippi Valley. The cultural affiliation of the human remains and associated funerary objects from the Chucalissa site (40SY1) with the Quapaw Nation is also supported by material cultural, ethnohistoric, and linguistic evidence.

Between 1952 and 1953, human remains representing, at minimum, 19 individuals were removed from Unit 6 of the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were excavated by the Memphis Archaeological and Geological Society (MAGS) for the Tennessee Department of Conservation. After excavation, these human remains were curated at the Memphis Pink Palace Museum, which donated the collection to the Nash Museum between 1956 and 1974. The human remains (40SY1–6MA/B–1, 40SY1–6MA/B–2, 40SY1–6MA/B–3, 40SY1–6MA/B–4, 40SY1–6MA/B–5, 40SY1–6MA/B–6, 40SY1–6MA/B–A, 40SY1–6MA/B–B, 40SY1–6MA/B–C, 40SY1–6MA/B–D, 40SY1–6MA/B–E, 40SY1–6MA/B–F, 40SY1–6MA/B–G, 40SY1–6MA/B–H, 40SY1–6MA/90, 40SY1–6MA/91) belong to two adult females; one adult male; three adults of unknown sex; six subadults of unknown sex; and seven individuals of unknown age and sex. No known individuals were identified. The 59 associated funerary objects are one whole ceramic vessel, two ceramic vessel sections, 43 miscellaneous animal bone fragments, two worked animal bones, eight pieces of daub, two lithics, and one pottery sherd.

The Chucalissa site (40SY1) was occupied during the Mississippian period (ca. 1000–1550 C.E.). Although the cultural affiliation of prehistoric inhabitants of the area is unknown, the datable Unit 6 (40SY1–6MA) burials and associated funerary objects date to the Boxtown Phase (ca. 1250–1400 C.E.) and Walls Phase (ca. 1400–1540 C.E.). Archeological and anthropological evidence support a cultural affiliation of the Quapaw with late precontact and early post contact polities in the northern Lower Mississippi Valley. The cultural affiliation of the human remains and associated funerary objects from the Chucalissa site (40SY1) with the Quapaw Nation is also supported by material cultural, ethnohistoric, and linguistic evidence.

Sometime prior to 1985, human remains representing, at minimum, three individuals were removed from Unit 12 of the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were excavated by the Tennessee Department of Conservation and Nash Museum staff. The human remains (40SY1–12/B–1, 40SY1–12/NC–1, 40SY1–12/NC–2) belong to one female adult and two individuals of unknown age and sex. No known individuals were identified. The one associated funerary object is a pottery sherd.

Sometime prior to 1960, human remains representing, at minimum, three individuals were removed from either Unit 3 or Unit 6 of the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were excavated by the Tennessee Department of Conservation and Nash Museum staff. The human remains (S1955.01.03/.06) belong to one adult and two subadults. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, four individuals were removed from the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were surface collected by Nash Museum staff. The human remains (40SY1/NC–1, 40SY1/NC–2, 40SY1/NC–3) belong to four individuals of unknown age and sex. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, 10 individuals were removed from the North Slope of the Chucalissa site,

40SY1, in Shelby County, TN. The human remains were found by Nash Museum staff. The human remains (40SY1/NA–A, 40SY1/NA–B, 40SY1/NA–C, 40SY1/NA–D, 40SY1/NA–E, 40SY1/NA–F, 40SY1/NA–G, 40SY1/NA–H, 40SY1/NA–J) belong to 10 individuals of unknown age and sex. No known individuals were identified. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, two individuals were removed from the Chucalissa site, 40SY1, in Shelby County, TN. The human remains were found by Nash Museum staff. The human remains (40SY1/NA–K, 40SY1/NA–L) belong to two individuals of unknown age and sex. No known individuals were identified. No associated funerary objects are present.

The Chucalissa site (40SY1) was occupied during the Mississippian period (ca. 1000–1550 C.E.). Although the human remains and associated funerary objects from Unit 12 (40SY1–12) and Unit 3/6 (40SY1–3/6), as well as those human remains that were surface collected from the Chucalissa site (40SY1) or found on the site, cannot be assigned a date, the archeological evidence at the Chucalissa site (40SY1) suggests they date range beginning with the Late Woodland and Mississippi periods/Ensley phase (pre-900 C.E.) and continuing through the Mitchell (ca. 900–1250 C.E.), Boxtown (ca. 1250–1400), and Walls (ca. 1250–1540 C.E.) phases. Archeological and anthropological evidence support a cultural affiliation of the Quapaw with late precontact and early post contact polities in the northern Lower Mississippi Valley. The cultural affiliation of the human remains and associated funerary objects from the Chucalissa site (40SY1) with the Quapaw Nation is also supported by material cultural, ethnohistoric, and linguistic evidence.

Determinations Made by the C.H. Nash Memorial Museum/Chucalissa Archaeological Museum, University of Memphis

Officials of the C.H. Nash Memorial Museum/Chucalissa Archaeological Museum, University of Memphis have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 375 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 733 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Quapaw Nation (*previously* listed as The Quapaw Tribe of Indians).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Melissa Buchner, C.H. Nash Memorial Museum/Chucalissa Archaeological Museum, University of Memphis, 1987 Indian Village Drive, Memphis, TN 38109, telephone (901) 785–3160, email *chucalissa@memphis.edu,* by April 20, 2023. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Quapaw Nation (*previously* listed as The Quapaw Tribe of Indians) may proceed.

The C.H. Nash Memorial Museum/Chucalissa Archaeological Museum is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: March 15, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–05733 Filed 3–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035485; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Rice University, Houston, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Rice University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Brazoria County, TX.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 20, 2023.

ADDRESSES: Dr. Susan K. McIntosh, Department of Anthropology, MS–20, Rice University, P.O. Box 1892, Houston, TX 77251–1892, telephone (713) 348–3380, email *skmci@rice.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Rice University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Rice University.

Description

In 1971, human remains representing at minimum, five individuals were removed from the Shell Point site (41 BZ 2) in Brazoria County, TX, by Rice University (Rice) during a salvage project at the eroding shell midden on the margins of Chocolate Bayou. The human remains recovered by Rice included five individuals who had been interred together at the same time. Burial #1 contained the human remains of an adult male, Burial #2 contained the human remains of a child 5–6 years old, Burial #3 contained the human remains of an adult male. Burial #4 contained the human remains of an adult female, and Burial #5 contained the human remains of an adult male. No known individuals were identified. Eleven associated funerary objects were removed from the burial pit: five conch shell beads, one conch shell pendant, four bone awls, and one bone bead. Additionally, 137 pottery sherds were removed from various excavation units at the site, but could not be determined by the excavators to be contemporaneous with the burials. The 11 associated funerary objects are currently missing from the collection. Rice University continues to look for these 11 missing objects.

In 1973, an analysis of human remains from the site was published (Bulletin of the Texas Archaeological Society 44 (1973)). (This report included human remains removed by non-Rice personnel from three additional burials—#s 6, 7, and 8—sometime prior to the Rice excavations, which were not curated at Rice and whose location is unknown.) Based on the tall stature and ruggedness of the three males listed in this notice, which accords with 19th

century descriptions of then-living Karankawa Indians, the 1973 report concluded that ''there is little doubt that the Shell Point series can be identified as Karankawa.''

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, archeological, linguistic, historical, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Rice University has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- The 11 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Tonkawa Tribe of Indians of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after April 20, 2023. If competing requests for repatriation are received, Rice University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Rice University is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 15, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–05730 Filed 3–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035482; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Santa Barbara Museum of Natural History, Santa Barbara, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Barbara Museum of Natural History has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from a location near Big Oak Flat in Tuolumne County, California.

DATES: Repatriation of the human remains in this notice may occur on or after April 20, 2023.

ADDRESSES: Luke Swetland, President and CEO, Santa Barbara Museum of Natural History, 2559 Puesta del Sol, Santa Barbara, CA 93105, telephone (805) 682–4711, email *lswetland@sbnature2.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Santa Barbara Museum of Natural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Santa Barbara Museum of Natural History.

Description

Human remains representing, at minimum, one individual were removed from a location near Big Oak Flat in Tuolumne County, California. In 2013, a box labeled ''Chumash Skull'' and containing a human cranium and mandible was discovered among the items donated by an estate to a thrift store in Ojai, California. The Ventura County Sheriff's Department released the cranial remains to Julie Tumamait-Stenslie, Barbareño/Ventureño Band of Chumash Mission Indians, who in turn transferred them to the Santa Barbara Museum of Natural History. Subsequently, an investigation into the thrift store donation by the Ventura County Coroner revealed that these human remains had been in the donor's family for over 100 years, they were removed from a location near Big Oak Flat in Tuolumne County, and they were not Chumash. No known individual was identified. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, kinship, biological, archeological, linguistic, folkloric, oral traditional, historical, and other information or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Santa Barbara Museum of Natural History has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Bridgeport Indian Colony; Tule River Indian Tribe of the Tule River Reservation, California; and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 20, 2023. If competing requests for repatriation are received, the Santa Barbara Museum of Natural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Santa Barbara Museum of Natural History is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 15, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–05728 Filed 3–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035521; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: San Francisco State University NAGPRA Program, San Francisco, CA, and University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Francisco State University NAGPRA Program and University of California, Berkeley have completed a joint inventory of human remains and associated funerary objects and have determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Shasta County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 20, 2023.

ADDRESSES: Michelle Fitzgerald, San Francisco State University, 1600 Holloway Avenue, Administration Building 5th Floor, ADM 562C, San Francisco, CA 94132, telephone (415) 405–3545, email *nagpra@sfsu.edu,* and Alex Lucas, University of California, Berkeley, Office of Government and Community Relations, 120 California Hall, Berkeley, CA 94720, telephone (925) 791–7231, email *nagpra-ucb@berkeley.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the San Francisco State University NAGPRA Program and the University of California, Berkeley. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the San Francisco State University NAGPRA Program and the University of California, Berkeley.

Description

In 1960, human remains representing, at minimum, 17 individuals, were removed from site CA–SHA–169 in Shasta County, CA, as part of excavations conducted by San Francisco State College (now San Francisco State University) prior to construction of a pumping plant. The site is multi-component, spanning periods before and after European contact. According to San Francisco State files, human remains and cultural items were housed at San Francisco State University after the excavation, and an undated document from the former Treganza Anthropology Museum (TAM) at San Francisco State University states that ''8 cardboard boxes-all burials'' from CA–SHA–169 were sent to the Lowie (now Hearst) Museum at the University of California, Berkeley. A letter from the former TAM to the Lowie Museum on May 26, 1969, indicates the burials were transferred ''late in 1965 or early in 1966.'' San Francisco State University repatriated other human remains and associated funerary objects from this site in 2016 but had previously categorized additional cultural items as ''Non-Burial Material.'' However, through additional consultation in 2022, these items (listed below) were re-categorized as associated funerary objects. The 50 associated funerary objects are made up of 44 associated funerary objects held by San Francisco State University and six associated funerary objects held by University of California, Berkeley. The 44 associated funerary objects held by San Francisco State University are one lot of antler items, one lot of arrow shaft straighteners, one basalt blade, one lot of obsidian blades, one lot of obsidian flakes, one lot of bone awls, one lot of bone beads, one lot of bone fish gorges, one stone chopper, one lot of clam shell disc beads, one chert core, one lot of dentalium, one lot of drills, one lot of modified faunal remains, one modified glass bottle, one glass bottle, one lot of *Glycymeris* shell beads, one groundstone with red ochre, one lot of *Haliotis* shell, one lot of modified *Haliotis* shell, one lot of *Haliotis* shell pendants, one lot of hammerstones, one lot of incised bone, one lot of modified stone, one white glass marble, one obsidian nodule, one lot of Gunther barbed projectile points, one lot of obsidian projectile points, five lots of *Olivella* shell beads, one lot of *Olivella* shell, one lot of pestles, one pipe bowl fragment, one porcelain sherd, one green slate or chert projectile point, three lots of unidentified shell beads, one stone pendant, and two lots of trade beads. The six associated funerary objects held by University of California, Berkeley, are one lot of beads, one lot of shell, one lot of stone, one lot of faunal remains, one lot of burnt items, and one matchbox.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, historical, other relevant information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the San Francisco State University NAGPRA Program and the

University of California, Berkeley have determined that:

- The human remains described in this notice represent the physical remains of 17 individuals of Native American ancestry.
- The 50 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Redding Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after April 20, 2023. If competing requests for repatriation are received, the San Francisco State University NAGPRA Program and the University of California, Berkeley must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The San Francisco State University NAGPRA Program and the University of California, Berkeley is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 15, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–05734 Filed 3–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA—NPS0035486; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Tennessee, McClung Museum of Natural History & Culture, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, McClung Museum of Natural History & Culture (UTK), has completed an inventory of human remains and has determined that there is no cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Humphreys County, TN.

DATES: Disposition of the human remains in this notice may occur on or after April 20, 2023.

ADDRESSES: Dr. Ozlem Kilic, Vice Provost for Academic Affairs, University of Tennessee, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *vpaa@utk.edu* and *okilic@utk.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by UTK.

Description

Sometime before 1943, human remains representing, at minimum, one individual were removed from 40HS218, the Wafford (or, alternatively, Watford/Wofford) Farm site, in Humphreys County, TN, by an unknown individual. These ancestral human remains were included in the George Barnes ''collection'' that was purchased by UTK in 1949. Barnes and his father had ''excavated and collected'' from many sites throughout the Tennessee River Valley during the early 20th century. No known individual was identified. No associated funerary objects are present.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a treaty.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UTK has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains described in this notice were removed from the aboriginal land of The Chickasaw Nation.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after April 20, 2023. If competing requests for disposition are received, UTK must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. UTK is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: March 15, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–05731 Filed 3–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035483; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Moravian Historical Society, Nazareth, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Moravian Historical Society has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Tuscarawas County, OH.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 20, 2023.

ADDRESSES: Farrar Lannon, Moravian Historical Society, 214 E Center Street, Nazareth, PA 18064, telephone (610) 759–5070, email *curator@moravianhistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Moravian Historical Society. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Moravian Historical Society.

Description

Human remains representing, at minimum, two individuals were removed from Tuscarawas County, OH. Between 1850 and 1880, the human remains were removed from the former site of the village of Gnadenhutten. In 1782, ninety-six pacifist Moravian Christian Indians (primarily Lenape and Mohican) were massacred by U.S. militiamen from Pennsylvania at Gnadenhutten. After looting the homes, the militiamen burned the village. The killing field remained untouched for 17 years until 1799, when Moravian missionaries and Christian Indians visited the site, collected all the skeletal remains that they could find, and buried them in one mass grave. In 1857, a B. Roming donated a single proximal phalange to the Moravian Historical Society (MHS) bearing the inscription ''toe-bone of an Indian from Gnadenhutten, Ohio.'' In 1985, Mrs. John Weinlick donated a small, decorated box to MHS containing four bone fragments and pieces of burnt corn that had been collected from Gnadenhutten in 1872. No known individuals were identified. The 60 associated funerary objects are the pieces of burnt corn.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Moravian Historical Society has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 60 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after April 20, 2023. If competing requests for repatriation are received, the Moravian Historical Society must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Moravian Historical Society is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 15, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–05729 Filed 3–20–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035487; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: The Filson Historical Society, Louisville, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Filson Historical Society intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Hardin County, TN, and an unknown location in TN.

DATES: Repatriation of the cultural items in this notice may occur on or after April 20, 2023.

ADDRESSES: Kelly Hyberger, Filson Historical Society, 1310 South Third Street, Louisville, KY 40208, telephone (502) 635–5083, email *khyberger@filsonhistorical.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Filson Historical Society. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the Filson Historical Society.

Description

On an unknown date prior to 1933, one unassociated funerary object was removed from a field in Hardin County, TN. This item was plowed up by an unknown farmer near the Tennessee River and opposite Pittsburg Landing. The Filson purchased this item from Ira Archer in 1933. The one unassociated funerary object is a shell gorget.

On an unknown date, one unassociated funerary object was removed from an unknown location in Tennessee. A Filson catalog record created between 1940–1941 indicates this item was removed from a Native American burial ground. The one unassociated funerary object is a flint knife.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following type of information was used to reasonably trace the relationship: geographical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Filson Historical Society has determined that:

- The two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Chickasaw Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after April 20, 2023. If competing requests for repatriation are received, the Filson Historical Society must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Filson Historical Society is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: March 15, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–05732 Filed 3–20–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1299]

Certain Mobile Telephones, Tablet Computers With Cellular Connectivity, and Smart Watches With Cellular Connectivity, Components Thereof, and Products Containing Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement and To Review and Take No Position on an Initial Determination Granting in Part a Motion for Summary Determination Concerning the Economic Prong of the Domestic Industry Requirement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 26) of the presiding administrative law judge (''ALJ'') terminating the investigation on the basis of settlement and to review and take no position on an ID (Order No. 22) granting in part a motion for summary determination concerning the economic prong of the domestic industry requirement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 24, 2022. 87 FR 10384 (Feb. 24, 2022). The complaint, as filed and supplemented by Ericsson Inc. of Plano, TX and Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (collectively, ''Ericsson''), alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile telephones, tablet computers with cellular connectivity, and smart watches with cellular connectivity, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No. 8,102,805 (''the '805 patent''); U.S. Patent No. 9,532,355 (''the '355 patent''); U.S. Patent No. 11,139,872 (''the '872 patent''); and U.S. Patent No. 10,425,817 (''the '817 patent''). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation named Apple, Inc. of Cupertino, CA as the sole respondent. *Id.* at 10385. The Office of Unfair Import Investigations is participating in the investigation. *Id.*

On August 22, 2022, Ericsson moved unopposed for summary determination that it satisfied the economic prong of the domestic industry requirement of section 337 with respect to each of the four asserted patents based on showings pursuant to section 337(a)(3)(A) and (B).

On November 15, 2022, the ALJ issued Order No. 22, which granted Ericsson's motion in part. Specifically, the ID granted summary determination

that Ericsson satisfied the economic prong of the domestic industry requirement for the '805, '355, and '872 patents based on showings under 337(a)(3)(A) and (B). For the '817 patent, the ID found that Ericsson satisfied the economic prong of the domestic industry requirement based on its showing under section 337(a)(3)(A) only. The ID found that a genuine issue of material fact precluded granting summary determination as to the '817 patent based on Ericsson's showing under section 337(a)(3)(B). No petitions for review of Order No. 22 were filed. Thereafter, the Commission extended the time to determine whether to review Order No. 22 to March 16, 2023.

On February 24, 2023, the ALJ issued Order No. 26, which granted the parties' joint motion to terminate this investigation in its entirety on the basis of settlement between the parties. The ID found that the motion complied with the applicable Commission rules. *See* 19 CFR 210.21(b)(1). The ID also found that termination of the investigation based on settlement is not contrary to the public interest. No petitions for review of Order No. 26 were filed.

The Commission has determined not to review Order No. 26 and to review and take no position on Order No. 22. This investigation is terminated in its entirety.

The Commission vote for this determination took place on March 15, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 15, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05746 Filed 3–20–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–017]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 30, 2023 at 9:00 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. No. 731–TA–663 (Fifth Review) (Paper Clips from China). The Commission currently is scheduled to complete and file its determinations and views of the Commission on April 11, 2023.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202–205–2000.

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: March 17, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–05844 Filed 3–17–23; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0312]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection: Survey of State Criminal History Information Systems (SSCHIS)

AGENCY: Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 22, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Devon Adams, Deputy Director, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *devon.adams@usdoj.gov;* telephone: 202–305–0765).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently collection approved collection.

(2) *The Title of the Form/Collection:* Survey of State Criminal History Information Systems (SSCHIS).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is N/A. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Respondents are state government agencies, primarily state criminal history record repositories. The SSCHIS report, the most comprehensive data available on the collection and maintenance of information by state criminal history record systems, describes the status of such systems and record repositories on a biennial basis. Data collected from state record repositories serves as the basis for estimating the percentage of total state records that are immediately available through the FBI's Interstate

Identification Index (III), and the percentage of arrest records that include dispositions. Other data presented include the number of records maintained by each state, the percentage of automated records in the system, and the number of states participating in the National Fingerprint File and the National Crime Prevention and Privacy Compact which authorizes the interstate exchange of criminal history records for noncriminal justice purposes. The SSCHIS also contains information regarding the timeliness and completeness of data in state record systems and procedures employed to improve data quality.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The total number of respondents is 56. The average length of time per respondent is 4 hours. This estimate is based on the average amount of time reported by six states that reviewed the survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total burden associated with this collection is estimated to be 224 hours.

If additional information is required, contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: March 16, 2023.

John R. Carlson,

Department Clearance Officer for PRA, Policy and Planning Staff, U.S. Department of Justice.

[FR Doc. 2023–05751 Filed 3–20–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bureau of Labor Statistics Occupational Safety and Health Statistics Cooperative Agreement Application Package

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Bureau of Labor Statistics (BLS)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of Labor has delegated to the BLS the authority to collect, compile, and analyze statistical data on work-related injuries and illnesses, as authorized by the Occupational Health Act of 1970 (Pub. L. 91–596). The Cooperative Agreement is designed to allow the BLS to ensure conformance with program objectives. The BLS has full authority over the financial operations of the statistical program. The existing collection of information allows Federal staff to negotiate the Cooperative Agreement with the State Grant Agencies and monitor their financial and programmatic performance and adherence to administrative requirements imposed by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) and other grant related regulations. New requirements would only take effect upon OMB approval. BLS is now seeking approval to incorporate changes from the implementation of a new DOL grants management system into the FY2023 Cooperative Agreement. For additional substantive information about this ICR see the related notice published in the **Federal Register** on November 18, 2020 (85 FR 73514).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The current approval is scheduled to expire on June 30, 2024.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–BLS.

Title of Collection: Bureau of Labor Statistics Occupational Safety and Health Statistics Cooperative Agreement Application Package.

OMB Control Number: 1220–0149.

Affected Public: State, Local, and Tribal Governments; Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 55.

Total Estimated Number of Responses: 493.

Total Estimated Annual Time Burden: 462 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–05722 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0124]

Proposed Extension of Information Collection; Health Standards for Diesel Particulate Matter Exposure (Underground Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public

and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Health Standards for Diesel Particulate Matter Exposure (Underground Coal Mines).

DATES: All comments must be received by the Office of Standards, Regulations, and Variances on or before May 22, 2023.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for docket number MSHA–2022–0055.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

MSHA establishes standards and regulations for diesel-powered equipment in underground coal mines that provide additional important protection for coal miners who work on and around diesel-powered equipment. The standards are designed to reduce the risks to underground coal miners of serious health hazards associated with exposure to high concentrations of diesel particulate matter. The standards in 30 CFR 72.510(a) and (b) (Miner health training), and 72.520(a) and (b) (Diesel equipment inventory) contain information collection requirements for underground coal mine operators.

30 CFR 72.510(a) requires underground coal mine operators to provide annual training to all miners who may be exposed to diesel emissions. The training must include: health risks associated with exposure to diesel particulate matter; methods used in the mine to control diesel particulate concentrations; identification of the personnel responsible for maintaining those controls; and actions miners must take to ensure that controls operate as intended. Under 30 CFR 72.510(b), underground coal mine operators are required to keep a record of the training for 1 year.

30 CFR 72.520(a) and (b) require underground coal mine operators to maintain an inventory of diesel-powered equipment units together with a list of information about any unit's emission control or filtration system. The list must be updated within 7 calendar days of any change.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Health Standards for Diesel Particulate Matter Exposure (Underground Coal Mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *https://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns provisions for Health Standards for Diesel Particulate Matter Exposure (Underground Coal Mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0124.

Affected Public: Business or other for-profit.

Number of Respondents: 164.

Frequency: On occasion.

Number of Responses: 55,980.

Annual Burden Hours: 710 hours.

Annual Respondent or Recordkeeper Cost: $24.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–05720 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0003]

Proposed Extension of Information Collection; Radiation Sampling and Exposure Records

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Radiation Sampling and Exposure Records.

DATES: All comments must be received by the Office of Standards, Regulations, and Variances on or before May 22, 2023.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0072.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Under the authority of Section 103 of the Federal Mine Safety and Health Act of 1977, MSHA is required to issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act.

Airborne radon and radon daughters exist in every uranium mine and in several other underground mining commodities. Radon is radioactive gas. It diffuses into the underground mine atmosphere through the rock and the ground water. Radon decays in a series of steps into other radioactive elements, which are solids, called radon daughters. Radon and radon daughters are invisible and odorless. Decay of radon and its daughters results in emissions of alpha energy.

Medical doctors and scientists have associated high radon daughter exposures with lung cancer. The health hazard arises from breathing air contaminated with radon daughters which are in turn deposited in the lungs. The lung tissues are sensitive to alpha radioactivity.

The amounts of airborne radon daughters to which most miners can be exposed with no adverse effects have been established and are expressed as working levels (WL). The current MSHA standard is a maximum personal exposure of 4 working level months per year.

Excess lung cancer in uranium miners, just as coal workers' pneumoconiosis, silicosis, and other debilitating occupational diseases, has been recognized for many years. Thus, an adequate base of accurate exposure level data is essential to control miners' exposures and permit an evaluation of the effectiveness of existing regulations.

30 CFR 57.5037 (Radon daughter exposure monitoring) establishes the procedures to be used by the mine operator in sampling mine air for the presence and concentrations of radon daughters. Operators are required to conduct weekly sampling where concentrations of radon daughters exceed 0.3 WL. Sampling is required bi-weekly where uranium mines have readings of 0.1 to 0.3 WL and every 3 months in non-uranium underground mines where the readings are 0.1 to 0.3 WL. Mine operators are required to keep records of all mandatory samplings. Records must include the sample date, location, and results, and must be retained at the mine site or nearest mine office for at least 2 years.

30 CFR 57.5040 (Exposure records) requires mine operators to calculate and record individual exposures to radon daughters on MSHA Form 4000–9 ''Record of Individual Exposure to Radon Daughters.'' The calculations are based on the results of the weekly sampling required by 30 CFR 57.5037 (Radon daughter exposure monitoring). Records must be maintained by the operator and submitted to MSHA annually.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Radiation Sampling and Exposure Records. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *https://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made

available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns provisions for Radiation Sampling and Exposure Records. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0003.

Affected Public: Business or other for-profit.

Number of Respondents: 4.

Frequency: On occasion.

Number of Responses: 404.

Annual Burden Hours: 402 hours.

Annual Respondent or Recordkeeper Cost: $20.

MSHA Form: MSHA Form 4000–9, Record of Individual Exposure to Radon Daughters.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–05716 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0048]

Proposed Extension of Information Collection; Respirator Program Records

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Respirator Program Records.

DATES: All comments must be received by MSHA's Office of Standards, Regulations, and Variances on or before May 22, 2023.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0056.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

30 CFR 56.5005 (Surface metal and Nonmetal Mines—Control of exposure to airborne contaminants) and 57.5005 (Underground Metal and Nonmetal Mines—Control of exposure to airborne contaminants) require, whenever respiratory equipment is used, that metal and nonmetal mine operators institute a respirator program governing selection, maintenance, training, fitting, supervision, cleaning, and use of respirators. These requirements seek to control miner exposure to harmful airborne contaminants by using engineering controls to prevent contamination and vent or dilute the contaminated air. However, where accepted engineering control measures have not been developed or when necessary by the nature of work involved (for example, while establishing controls or occasional entry into hazardous atmospheres to perform maintenance or investigation), employees may work for reasonable periods of time in concentrations of airborne contaminants exceeding permissible levels if they are protected by appropriate respiratory protective equipment.

30 CFR 56.5005 and 57.5005 incorporate, by reference, requirements of the American National Standards Institute's Practices for Respiratory Protection (ANSI Z88.2–1969). These incorporated requirements mandate that miners who must wear respirators are fit-tested to the respirators that they will use. Certain records are also required to be kept in connection with respirators, including: written standard operating procedures governing the selection and use of respirators; fit-test results; and records of emergency respirators inspection.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information

collection. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *https://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Respirator Program Records. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Revision of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0048.

Affected Public: Business or other for-profit.

Number of Respondents: 350.

Frequency: On occasion.

Number of Responses: 6,300.

Annual Burden Hours: 3,588 hours.

Annual Respondent or Recordkeeper Cost: $0. The estimated annual cost burden to respondents or recordkeeper decreased from $140,000 to $0 due to a modification to what costs contribute to recordkeeping and information collection burdens.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–05718 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0089]

Proposed Extension of Information Collection; Safety Defects; Examination, Correction, and Records

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Safety Defects; Examination, Correction, and Records.

DATES: All comments must be received by the Office of Standards, Regulations, and Variances on or before May 22, 2023.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0073.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

This Information Collection Request concerns recordkeeping requirements related to: (1) Inspection of compressed-air receivers and other unfired pressure vessels; (2) Boilers; (3) Safety defects; examination; correction and records; and (4) Examination of working places in surface and underground metal and nonmetal mines.

30 CFR 56.13015 (Surface Metal and Nonmetal Mines—Inspection of compressed-air receivers and other unfired pressure vessels) and 57.13015 (Underground Metal and Nonmetal Mines—Inspection of compressed-air receivers and other unfired pressure vessels) require that compressed-air receivers and other unfired pressure vessels must be inspected by inspectors holding a valid National Board Commission and in accordance with the applicable chapters of the National Board Inspection Code, a Manual for Boiler and Pressure Vessels Inspectors, 1979. Safety defects found on compressed-air receivers and other

unfired pressure vessels have caused injuries and fatalities in the mining industry.

Records of inspections must be kept in accordance with the requirements of the National Board Inspection Code and the records must be made available to the Secretary or an authorized representative.

30 CFR 56.13030 (Surface Metal and Nonmetal Mines—Boilers) and 57.13030 (Underground Metal and Nonmetal Mines—Boilers) require that fired pressure vessels (boilers) must be equipped with water level gauges, pressure gauges, automatic pressure-relief valves, blowdown piping, and other safety devices approved by the American Society of Mechanical Engineers to protect against hazards from overpressure, flameouts, fuel interruptions, and low water level.

Records of inspection and repairs must be retained by the mine operator in accordance with the requirements of the ASME Boiler and Pressure Vessel Code, 1977, and the National Board Inspection Code (progressive records—no limit on retention time) and shall be made available to the Secretary or an authorized representative.

30 CFR 56.14100 (Surface Metal and Nonmetal Mines—Safety defects; examination, correction and records) and 57.14100 (Underground Metal and Nonmetal Mines—Safety defects; examination, correction and records) require that operators must inspect equipment, machinery, and tools that are to be used during a shift for safety defects before the equipment is placed in operation. Defects affecting safety are required to be corrected in a timely manner. In instances where the defect makes continued operation of the equipment hazardous to persons, the equipment must be removed from service, tagged to identify that it is out of use, and repaired before use is resumed.

Safety defects on self-propelled mobile equipment account for many injuries and fatalities in the mining industry. Inspection of this equipment prior to use is required to ensure safe operation. The equipment operator is required to make a visual and operational check of the various primary operating systems that affect safety, such as brakes, lights, horn, seatbelts, tires, steering, back-up alarm, windshield, cab safety glass, rear and side view mirrors, and other safety and health related items.

Any defects found are required to be either corrected immediately or reported to and recorded by the mine operator prior to the timely correction. The precise format in which the record is kept is left to the discretion of the mine operator. Reports of uncorrected defects are required to be recorded by the mine operator and kept at the mine office from the date the defects are recorded until the defects are corrected.

30 CFR 56.18002 (Surface Metal and Nonmetal Mines—Examination of working places) and 57.18002 (Underground Metal and Nonmetal Mines—Examination of working places) require that a competent person designated by the operator shall examine each working place at least once each shift before miners begin work in that place for conditions that may adversely affect safety or health. A record of each examination must be made before the end of the shift for which the examination was conducted. The record must contain the name of the person conducting the examination; the date of the examination; location of all areas examined; and description of each condition found that may adversely affect the safety or health of miners. When a condition that may adversely affect safety or health is corrected, the examination record shall include, or be supplemented to include, the date of the corrective action. The operator must maintain the examination records for at least 1 year, make the records available for inspection by authorized representatives of the Secretary and the representatives of miners, and provide these representatives a copy on request.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *https://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains recordkeeping provisions for 30 CFR 56.13015 (Inspection of compressed-air receivers and other unfired pressure vessels) and 57.13015 (Inspection of compressed-air receivers and other unfired pressure vessels), 56.13030 (Boilers), 57.13030 (Boilers), 56.14100 (Safety defects; examination, correction and records) and 57.14100 (Safety defects; examination, correction and records) and 56.18002 (Examination of working places) and 57.18002 (Examination of working places). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0089.

Affected Public: Business or other for-profit.

Number of Respondents: 11,279.

Frequency: On occasion.

Number of Responses: 5,487,441.

Annual Burden Hours: 1,236,293 hours.

Annual Respondent or Recordkeeper Cost: $218,190.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–05719 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0152]

Proposed Extension of Information Collection; Periodic Medical Surveillance Examinations for Coal Miners

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Periodic Medical Surveillance Examinations for Coal Miners.

DATES: All comments must be received MSHA's Office of Standards, Regulations, and Variances on or before May 22, 2023.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for docket number MSHA–2022–0057.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

The Mine Act authorizes the National Institute for Occupational Safety and Health (NIOSH) to study the causes and consequences of coal-related respiratory disease, and in cooperation with MSHA, to carry out a program for early detection and prevention of pneumoconiosis. NIOSH administers the National Coal Workers' Health Surveillance Program, ''Specifications for Medical Examinations of Underground Coal Miners,'' as specified in 42 CFR part 37 (Chest Radiographic Examinations). 30 CFR 72.100 (Periodic examinations) contains collection requirements for these activities in paragraphs (d) and (e).

30 CFR 72.100(d) requires that each mine operator must develop and submit a plan for NIOSH approval in accordance with 42 CFR 37 for providing miners with the required periodic examinations specified in 30 CFR 72.100(a) and a roster specifying the name and current address of each miner covered by the plan.

30 CFR 72.100(e) requires that each mine operator must post on the mine bulletin board at all times the approved plan for providing the examinations specified in 72.100(a).

30 CFR 72.100(d) and (e) are requirements that mirror NIOSH information collection requirements under 42 CFR 37.4 (Chest radiographic examinations conducted by the Secretary) (existing OMB No. 0920–0020)). Including these requirements allows MSHA to use its inspection and enforcement authority to ensure that operators comply with these provisions.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *https://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns provisions for Periodic Medical Surveillance Examinations for Coal Miners. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0152.

Affected Public: Business or other for-profit.

Number of Respondents: 664.

Frequency: On occasion.

Number of Responses: 797.

Annual Burden Hours: 310 hours.

Annual Respondent or Recordkeeper Cost: $239.

The decrease in the number of respondents, response, burden hours and respondent or recordkeeper cost is due to the decrease in respondents.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–05721 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0024]

Proposed Extension of Information Collection; Application for Waiver of Surface Facilities Requirements

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Application for Waiver of Surface Facilities Requirements.

DATES: All comments must be received by the Office of Standards, Regulations, and Variances on or before May 22, 2023.

ADDRESSES: Comments concerning the information collection requirements of this *notice* may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0074.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

30 CFR 71.400 (Bathing facilities; change rooms; sanitary flush toilet facilities), 71.401 (Location of facilities), 71.402 (Minimum requirements for bathing facilities, change rooms, and sanitary flush toilet facilities) and 75.1712–1 (Availability of surface bathing facilities; change rooms; and sanitary facilities), 75.1712–2 (Location of surface facilities), 75.1712–3 (Minimum requirements of surface bathing facilities, change rooms, and sanitary toilet facilities) require coal mine operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. If the operator is unable to meet any or all of the requirements, the operator may apply for a waiver. 71.403 (Waiver of surface facilities requirements; posting of waiver), 71.404 (Application for waiver of surface facilities requirements), 75.1712–4 (Waiver of surface facilities requirements), and 75.1712–5 (Application for waiver of surface facilities) provide procedures by which an operator may apply for and be granted a waiver. Applications must be submitted to the MSHA District Manager for the district in which the mine is located and must contain the name and address of the mine operator, name and location of the mine, and a detailed statement of the grounds on which the waiver is requested.

Waivers for surface mines may be granted by the District Manager for a period not to exceed 1 year. If the waiver is granted, surface mine operators may apply for annual extensions of the approved waiver. Waivers for underground mines may be granted by the District Manager for the period of time requested by the underground mine operator as long as the circumstances that were used to justify granting the waiver remain in effect. Waivers are not transferable to a successor coal mine operator.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Application for Waiver of Surface Facilities Requirements. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *https://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations, and

Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Application for Waiver of Surface Facilities Requirements. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0024.

Affected Public: Business or other for-profit.

Number of Respondents: 186.

Frequency: On occasion.

Number of Responses: 186.

Annual Burden Hours: 74 hours.

Annual Respondent or Recordkeeper Cost: $930.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-ae Aromie Noe,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2023–05717 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0022]

Student Data Form; Revision of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Student Data Form.

DATES: Comments must be submitted (postmarked, sent, or received) by May 22, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2010–0022) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that employment has been tested and is in safe operating condition.

The OSH Act authorizes the Occupational Safety and Health Administration (OSHA or agency) to conduct education and training courses (29 U.S.C. 670). These courses must educate an adequate number of qualified personnel to fulfill the purposes of the OSH Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and workers to recognize, avoid, and prevent unsafe and unhealthful working conditions.

Under section 21 of the OSH Act, the OSHA Training Institute (OTI or Institute) provides basic, intermediate, and advanced training and education in occupational safety and health for state compliance officers, agency professionals and technical-support personnel, employers, workers, organizations representing workers and employers, educators who develop curricula and teach occupational safety and health courses, and representatives of professional safety and health groups. The Institute provides courses on occupational safety and health at its national training facility in Arlington Heights, Illinois.

All course information, materials, tests, and virtual links are now managed through a learning management system. Non-Federal OSHA students attending Institute courses must request new user login credentials to access the learning management system. New user credentials can be requested through *https://www.oshaelearning.geniussis.com/PublicWelcome.aspx.* The

registration form requires that the new user applicant provide information on their job specialization and affiliation and can be accessed through the button labeled ''New User (other than federal OSHA).''

The OSHA Office of Training and Education uses the collected job specialization and affiliation information to sort reporting data quarterly, especially total student attendance, student attendance by each offered course, and student demographics and job affiliations (*e.g.,* safety, health, and whistleblower investigator job titles).

The agency uses the information collected under the ''Course Information,'' ''Personal Data,'' and ''Employer Data'' to identify private sector students so that it can collect tuition costs from them or their employers as authorized by 31 U.S.C. 9701 (''Fees and Charges for Government Services and Things of Value''); Office of Management and Budget Circular A–25 (''User Charges''); and 29 CFR part 1949 (''Office of Training and Education, Occupational Safety and Health Administration''). The information in the ''Personal Data'' and ''Emergency Contacts'' categories permits OSHA to contact students if an emergency arises at their home, place of employment, or local accommodations, and to alert supervisors/alternate contacts of a trainee's injury or illness.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Student Data Form. The agency is also requesting a decrease in the burden hour estimate of 166 hours (from 333 hours to 167 hours). This reduction is a result of decreased student enrollments in Institute courses because of the ongoing COVID–19 pandemic.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Student Data Form (OSHA Form 182).

OMB Control Number: 1218–0172.

Affected Public: Individuals; business or other for-profit organizations; Federal Government; State, local, or Tribal governments.

Number of Respondents: 2,000.

Number of Responses: 2,000.

Frequency of Responses: On occasion.

Average Time per Response: Average time per response is 5 minutes.

Estimated Total Burden Hours: 167.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); if your comments, including attachments, are not longer than 10 pages you may fax then to the OSHA Docket Office at 202–693–1648; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0022). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506, *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on March 14, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–05755 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2019–0002]

Respirable Crystalline Silica Standards for General Industry, Shipyards, and Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend OMB approval of the information collection requirements specified in the Respirable Crystalline Silica Standards for General Industry, Maritime, and Construction.

DATES: Comments must be submitted (postmarked, sent, or received) by May 22, 2023.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office.

Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number (OSHA–2019–0002) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (see 29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with a minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (see 29 U.S.C. 657).

The Respirable Crystalline Silica Standards for general industry (29 CFR 1910.1053), shipyards (29 CFR 1915.1053) and construction (29 CFR 1926.1153) contain the following information collection requirements: conducting worker exposure assessments and notifying workers of the assessment results and any corrective actions being taken; establishing, implementing, reviewing, evaluating, and updating a written exposure control plan and making the plan available to workers and designated representatives; creating and submitting air quality permit notifications; establishing a respiratory protection program; providing qualitative fit-testing and maintaining records; providing medical surveillance to workers; providing the physician or other licensed health care provider (PLHCP), or the specialist, with specific information; ensuring that the PLHCP, or specialist, explains the results of the medical examination to the employee and provides each employee with a copy of their written medical report; obtaining a written medical opinion from the PLHCP, or specialist, and ensuring that each employee receives a copy of the opinion; and making and maintaining air monitoring data, objective data, and medical surveillance records; and providing workers and designated representatives with access to these records. The records are used by workers, employers, and OSHA to determine the effectiveness of the employer's compliance efforts.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Respirable Crystalline Silica Standards for General Industry, Maritime and Construction. The agency is requesting an adjustment decrease of 4,672,138 burden hours (from 12,468,266 to 7,796,128). The requested adjustment decrease is associated with the agency now zeroing out the burden hours of initial exposure assessments and the initial medical examinations for existing employees; and employers completing their written exposure assessment and respirator programs. In addition, the burden for rule familiarization and other one-time costs incurred within the first year was removed. Also, the agency is requesting an adjustment decrease of $132,079,926 for operation and maintenance costs (from $393,789,550 to $261,709,624) to adjust for substantially decreased estimates of initial exposure assessments and initial medical examinations.

Type of Review: Extension of a currently approved collection.

Title: Respirable Crystalline Silica Standards for General Industry (29 CFR 1910.1053) and Shipyards (29 CFR 1915.1053) and Construction (29 CFR 1926.1153).

OMB Control Number: 1218–0266.

Affected Public: Business or other for-profits.

Number of Respondents: 764,318.

Frequency: Biennially, Once, On occasion, Quarterly, Semi-annually, Annually.

Average Time per Response: Various.

Estimated Number of Responses: 17,203,330.

Estimated Total Burden Hours: 7,796,128.

Estimated Cost (Operation and Maintenance): $261,709,625.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648; or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2019–0002). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on March 14, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–05723 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2023–0007]

National Advisory Committee on Occupational Safety and Health (NACOSH) Heat Injury and Illness Prevention Work Group: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of NACOSH Heat injury and Illness Prevention Work Group meeting.

SUMMARY: The National Advisory Committee on Occupational Safety and Health (NACOSH) Heat Injury and Illness Prevention Work Group will meet April 27, 2023, by WebEx.

DATES: The NACOSH Heat Injury and Illness Prevention Work Group (Heat Work Group) will meet from 2:00 p.m. to 4:00 p.m., ET, April 27, 2023.

ADDRESSES:

Registration: Persons wishing to attend the meeting must register via the registration link on the NACOSH web page at *https://www.osha.gov/advisorycommittee/nacosh.* Upon registration, attendees will receive a Webex link for remote access to the meeting.

Requests for special accommodations: Submit requests for special accommodations, including translation services, for this NACOSH workgroup meeting by April 17, 2023, to Ms. Christie Garner, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2246; email: *garner.christie@dol.gov.*

Docket: To read or download documents in the public docket for this NACOSH meeting, go to *www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *www.regulations.gov.* All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information about NACOSH: Ms. Lisa Long, Deputy Director, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2409; email: *long.lisa@dol.gov.*

Telecommunication requirements: For additional information about the telecommunication requirements for the meeting, please contact Ms. Christie Garner, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone: (202) 693–2246; email: *garner.christie@dol.gov.*

For copies of this ***Federal Register*** *Notice:* Electronic copies of this **Federal Register** notice are available at *www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available at OSHA's web page at *https://www.osha.gov/advisorycommittee/nacosh.*

SUPPLEMENTARY INFORMATION:

I. Background

NACOSH was established by section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise, consult with, and make recommendations to the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. app.2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on NACOSH (29 CFR 1912.5 and 29 CFR part 1912a).

The establishment of subcommittees and subgroups, such as the NACOSH Heat Work Group, is contemplated by both the FACA's implementing regulations and OSHA's regulations on NACOSH (see, *e.g.,* 41 CFR 102–3.135; 29 CFR 1912a.13). The Heat Work Group will operate in accordance with the FACA and these regulations.

II. Meeting Information

Public attendance will be virtual only. Meeting information will be posted in the Docket (Docket No. OSHA–2023–0007) and on the NACOSH web page, *https://www.osha.gov/advisorycommittee/nacosh,* prior to the meeting. Members of the public may attend the NACOSH Heat Work Group meeting. However, any participation by the public will be in listen-only mode. OSHA is not receiving public comments or requests to speak at the Heat Work Group meeting.

The NACOSH Heat Illness and Injury Prevention Work Group (Heat Work Group) will meet from 2:00 p.m. to 4:00 p.m., ET on April 17, 2023.

Meeting agenda: The tentative agenda for this meeting includes:

- Recommendations on Potential Elements of Heat Injury and Illness Prevention Rulemaking
- Discussion of presentation to NACOSH

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655(b)(1) and 656(b), 5 U.S.C. App. 2, 29 CFR parts 1912 and 1912a, and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on March 16, 2023.

James S. Frederick,

Deputy Assistant Secretary for Occupational Safety and Health.

[FR Doc. 2023–05770 Filed 3–20–23; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Search Committee for LSC Inspector General (Search Committee) of the Legal Services Corporation Board of Directors will meet in-person on Sunday, March 26, 2023. The meeting will commence at 11:45 a.m. ET and will continue until the conclusion of the Committee's agenda.

PLACE: Legal Services Corporation, 3333 K Street NW, Washington, DC 20007.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Closed Session

1. Approval of Agenda
2. Discuss the Merits of Candidates who have been Interviewed
3. Consider and Act on a Recommendation to LSC's Board on a Candidate to Hire
4. Consider and Act on Motion to Adjourn the Meeting

Contact Person for More Information: Cheryl DuHart, Administrative Coordinator, Office of Legal Affairs, at (202) 295–1621. Questions may also be sent by electronic mail to *duhartc@lsc.gov.*

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

Dated: March 17, 2023.

Stefanie Davis,

Senior Associate General Counsel for Regulations, Legal Services Corporation.

[FR Doc. 2023–05848 Filed 3–17–23; 11:15 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation (LSC) Board of Directors and its committees will meet March 26–28, 2023. On Sunday, March 26, the first meeting will begin at 1:00 p.m. ET, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Monday, March 27, the first meeting will begin at 8:30 a.m. ET, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, March 28, the first meeting will begin at 8:30 a.m. ET, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting.

PLACE: Public Notice of Hybrid Meeting.

LSC will conduct its March 26–28, 2023, meetings at the offices of the Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, 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, March 26, 2023

• To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/86538109323?pwd=UURiMWg1U1Q5cjBXK0FaczdPSkQ2dz09*
- *Meeting ID:* 865 3810 9323
- *Passcode:* 32623

Monday, March 27, 2023

• To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/84640983491?pwd=SEdkU2JKaGliTW95VEMyRFFha0Jvdz09*
- *Meeting ID:* 846 4098 3491
- *Passcode:* 32723

Tuesday, March 28, 2023

• To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/87821771015?pwd=RXIxL2NhZFhrbklrWmRwMUcveUNkUT09*
- *Meeting ID: 878 2177 1015*
- *Passcode: 32823*
- 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 discuss follow-up work by the Office of Compliance and Enforcement relating to open Office of Inspector General investigations.

Governance and Performance Review Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to hear a report on the evaluation of LSC's officers, including Vice President for Grants Management, Vice President for Government Relations and Public Affairs, Vice President for Legal Affairs and General Counsel, and Chief Financial Officer and Treasurer.

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to receive a briefing on development activities and discuss prospective new Leaders Council and Emerging Leaders Council members.

Combined Audit and Finance Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to hear a briefing from the Corporation's outside auditor and discuss the Fiscal Year 2022 Audited Financial Statements. The briefing may include names of individuals, facts complied for investigative purposes, investigative techniques and procedures, and analysis of the facts and applicable law for enforcement purposes.

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 receive briefings by management and LSC's Inspector General and to consider and act on the General Counsel's report on potential and pending litigation involving LSC. The Board also will consider and act on a list of prospective Leaders Council and Emerging Leaders Council members and a recommendation from the Inspector General Search Committee.

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 portions of the closed session.[1]

A verbatim written transcript will be made of the closed sessions of the Audit, Governance and Performance Review, Institutional Advancement, Combined Audit and Finance, and Board of Directors 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, March 26, 2023

Audit Committee Meeting

Start Time: 1:00 p.m. ET

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on January 22, 2023
3. Briefing by the Office of Inspector General

[1] 5 U.S.C. 552b (a) (2) and (b). See also 45 CFR 1622.2 & 1622.3.

4. Management Update Regarding Risk Management
5. Briefing about Follow-up by the Office of Compliance and Enforcement on Referrals by the Office of Inspector General Regarding Audit Reports and Annual Financial Statement Audits of Grantees
6. Public Comment
7. Consider and Act on Other Business
8. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Closed Session

9. Approval of Minutes of the Committee's Closed Session Meeting on January 22, 2023
10. Briefing by Office Compliance and Enforcement on Active Enforcement Matter(s) and Follow-Up on Open Investigation Referrals from the Office of Inspector General
11. Consider and Act on Motion to Adjourn the Meeting

Sunday, March 26, 2023

Governance & Performance Review Committee Meeting

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on January 23, 2023
3. Public Comment
4. Consider and Act on Other Business
5. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Closed Session

6. Report on Evaluations of Vice President for Grants Management, Vice President for Government Relations & Public Affairs, Vice President for Legal Affairs and General Counsel, and Chief Financial Officer and Treasurer
7. Consider and Act on Motion to Adjourn the Meeting

Sunday, March 26, 2023

Communications Subcommittee of the Institutional Advancement Committee

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Subcommittee's Open Session Meeting on January 23, 2023
3. Communications and Social Media Update
4. Public Comment
5. Consider and Act on Other Business
6. Consider and Act on Motion to Adjourn the Meeting

Monday, March 27, 2023

Finance Committee

Start Time: 8:30 a.m. (ET)

Open Session

1. Approval of Agenda
2. Approval of the Minutes of the Committee's Open Session Meeting on January 22, 2023
3. Approval of Minutes of the Committee's Closed Session Meeting on January 22, 2023
4. Discussion of LSC's FY 2024 Appropriations Request
5. Discussion Regarding Process and Timetable for FY 2025 Budget Request
6. Public Comment
7. Consider and Act on Other Business
8. Consider and Act on Motion to Adjourn the Meeting

Monday, March 27, 2023

Delivery of Legal Services Committee

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on January 23, 2023
3. LSC Performance Criteria Update
4. Presentation on LSC Grantee Oversight, Compliance and Data
5. Public Comment
6. Consider and Act on Other Business
7. Consider and Act on a Motion to Adjourn the Meeting

Monday, March 27, 2023

Institutional Advancement Committee

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Institutional Advancement Committee's Open Session Meeting on January 11, 2023
3. Update on Leaders Council and Emerging Leaders Council
4. Development Report
5. Public Comment
6. Consider and Act on Other Business
7. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Closed Session

1. Approval of Minutes of the Institutional Advancement Committee's Closed Session Meeting on January 11, 2023
2. Development Activities Report
3. Update on LSC's 50th Anniversary Fundraising Campaign
4. Consider and Act on Motion to Approve Leaders Council and Emerging Leaders Council Invitees
5. Consider and Act on Other Business
6. Consider and Act on Motion to Adjourn the Meeting

Monday, March 27, 2023

Combined Audit & Finance Committee

Open Session

1. Approval of Agenda
2. Presentation of Fiscal Year 2022 Annual Financial Audit
3. Consider and Act on Motion to Suspend the Open Session Meeting and Proceed to a Closed Session

Closed Session

4. Management Briefing on Fiscal Year 2022 Annual Financial Audit
5. Opportunity to Ask Auditors Questions without Management Present
6. Communication by Corporate Auditor with those Charged with Governance Under Statement on Auditing Standard 114
7. Consider and Act on Motion to Adjourn the Closed Session Meeting and Resume the Open Session Meeting

Open Session

8. Consider and Act on *Resolution #2023–XXX, Acceptance of the Draft Audited Financial Statements for Fiscal Year 2022 and Fiscal Year 2021*
9. Public Comment
10. Consider and Act on Other Business
11. Consider and Act on Motion to Adjourn the Meeting

Tuesday, March 28, 2023

Board of Directors

Start Time: 8:30 a.m.

Open Session

1. Pledge of Allegiance
2. Approval of Agenda
3. Approval of Minutes of the Board's Open Session Meeting on January 23, 2023
4. Chairman's Report
5. Members' Reports
6. President's Report
7. Inspector General's Report
8. Consider and Act on *Resolution #2023–XXX: In Recognition and Appreciation of Rebecca Fertig Cohen*
9. Consider and Act on the Report of the Operations and Regulations Committee, following its Virtual Meeting on March 13, 2023
10. Consider and Act on the Report of the Audit Committee
11. Consider and Act on the Report of the Governance and Performance Review Committee
12. Consider and Act on the Report of the Finance Committee

13. Consider and Act on the Report of the Delivery of Legal Services Committee
14. Consider and Act on the Report of the Institutional Advancement Committee
15. Consider and Act on the Report of the Combined Audit and Finance Committees
16. Public Comment
17. Consider and Act on Other Business
18. Consider and Act on Whether to Authorize a Closed Session of the Board to Address Items Listed Below

Closed Session

1. Approval of Minutes of the Committee to Explore Options for LSC Office Space Meetings on January 10 and January 17, 2023
2. Approval of Minutes of the Board's Closed Session Meeting on January 23–24, 2023
3. Management Briefing
4. Inspector General Briefing
5. Consider and Act on General Counsel's Report on Potential and Pending Litigation Involving Legal Services Corporation
6. Consider and Act on Report and Recommendation of the Search Committee for LSC Inspector General
7. Consider and Act on List of Prospective Leaders Council and Emerging Council Invitees
8. Consider and Act on Motion to Adjourn the Meeting

Please refer to the LSC website (*https://lsc.gov/events/board-directors-quarterly-meeting-march-26-28-2023-washington-dc)* 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: Cheryl DuHart, Administrative Coordinator, Office of Legal Affairs, at (202) 295–1621. Questions may also be sent by electronic mail to *duhartc@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.*

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

Dated: March 17, 2023.

Stefanie Davis,

Senior Associate General Counsel for Regulations. Legal Services Corporation.

[FR Doc. 2023–05872 Filed 3–17–23; 4:15 pm]

BILLING CODE 7050–01–P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Notice of Meeting; National Intelligence University Board of Visitors

AGENCY: National Intelligence University (NIU), Office of the Director of National Intelligence (ODNI).

ACTION: Notice of meeting.

SUMMARY: The ODNI is publishing this notice to announce that the following Federal Advisory Committee meeting of the National Intelligence University Board of Visitors will take place. This meeting is closed to the public. This notice is being published less than 15 days prior to the meeting date due to administrative delays.

DATES: Wednesday March 29, 2023, 8:30 a.m. to 4 p.m., Bethesda, MD.

ADDRESSES: National Intelligence University, 4600 Sangamore Road Bethesda, MD 20816.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia ''Patty'' Larsen, Designated Federal Officer, (301) 243–2118 (Voice), *excom@odni.gov* (email). Mailing address is National Intelligence University, 4600 Sangamore Road, Bethesda, MD 20816. Website: *http://niu.edu/wp/about-niu/leadership-2/board-of-visitors/.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (''the Sunshine Act'') (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150. The meeting includes the discussion of classified information and classified materials regarding intelligence education issues and the Director of National Intelligence, or her designee, in consultation with the ODNI Office of General Counsel, has determined the meeting will be closed to the public under the exemptions set forth in 5 U.S.C. 552b(c)(1) and 552b(c)(2).

I. Purpose of the Meeting: The Board will discuss critical issues and advise the Director of National Intelligence on controlled unclassified or classified information as defined in 5 U.S.C. 552b(c)(1) and discuss matters related solely to the internal personnel rules and practices of NIU under 5 U.S.C. 552b(c)(2) and therefore will be closed to the public.

II. Agenda: Welcome and Call to Order, President State of the University, Resources—Budget, Personnel, Facilities, Break for Lunch, Resources—Strategic Planning, Information Technology, Whole of Institution Assessment Data, and National Intelligence University Board of Visitors Executive Session.

III. Meeting Accessibility: The public or interested organizations may submit written statements to the National Intelligence University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the National Intelligence University Board of Visitors.

IV. Written Statements: All written statements shall be submitted to the Designated Federal Officer for the National Intelligence University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration.

Robert A. Newton,

Committee Management Officer and Deputy Chief Operating Officer.

[FR Doc. 2023–05697 Filed 3–20–23; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2023–0061]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person.

DATES: Comments must be filed by April 20, 2023. A request for a hearing or petitions for leave to intervene must be filed by May 22, 2023. This monthly notice includes all amendments issued, or proposed to be issued, from February 3, 2023, to March 2, 2023. The last

monthly notice was published on February 21, 2023.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0061. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Susan Lent, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1365, email: *Susan.Lent@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0061, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0061.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0061, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR) ''Notice for public comment; State consultation,'' are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/cfr.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) the name, address, and

telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming

receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name(s), docket number(s), date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

Constellation Energy Generation, LLC; LaSalle County Station, Units 1 and 2; LaSalle County, IL	
Docket No(s)	50–373, 50–374.
Application date	January 12, 2023.
ADAMS Accession No	ML23013A076.
Location in Application of NSHC	Pages 9 and 10—Attachment 1.
Brief Description of Amendment(s)	The proposed amendments would revise the LaSalle County Station, Units 1 and 2, Updated Final Safety Analysis Report to allow the use of plastic section properties in the analysis of the lower downcomer braces.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 4300 Winfield Road Warrenville, IL 60555.
NRC Project Manager, Telephone Number	Robert Kuntz, 301–415–3733.
Constellation Energy Generation, LLC; Limerick Generating Station, Units 1 and 2; Montgomery County, PA	
Docket No(s)	50–352, 50–353.
Application date	November 17, 2022.
ADAMS Accession No	ML22321A105.
Location in Application of NSHC	Pages 18–21 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendments would revise Technical Specification (TS) ¾.7.2 ''Control Room Emergency Fresh Air Supply System-Common System'' to TS ¾.7.2.1, and add ''Control Room Air Conditioning (AC) System, TS ¾.7.2.2'' and modifying certain Limiting Condition for Operation and associated surveillance requirements consistent with Technical Specification Task Force (TSTF) TS Traveler TSTF–477, Revision 3, ''Add Action for Two Inoperable Control Room AC Subsystems,'' and NUREG–1433, Revision 5, ''Standard Technical Specifications—General Electric BWR [boiling water reactor]/4 Plants.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Jason Zorn, Associate General Counsel, Constellation Energy Generation, 101 Constitution Ave. NW, Suite 400 East, Washington, DC 20001.
NRC Project Manager, Telephone Number	V. Sreenivas, 301–415–2597.
Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 3; New London County, CT	
Docket No(s)	50–423.
Application date	January 13, 2023.
ADAMS Accession No	ML23013A224.
Location in Application of NSHC	Pages 7–10 of Attachment 1.

LICENSE AMENDMENT REQUEST(S)—Continued

Brief Description of Amendment(s)	The proposed amendment would revise Millstone Power Station, Unit 3, Technical Specification 3.4.9.1, ''Reactor Coolant System Pressure/Temperature Limits,'' to reflect that the heatup and cooldown limitations in Figures 3.4–2 and 3.4–3, respectively, are applicable up to 54 effective full power years. Two typographical errors would also be corrected in the proposed amendment.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W.S. Blair, Senior Counsel, Dominion Energy Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	Richard Guzman, 301–415–1030.

Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC

Docket No(s)	50–395.
Application date	April 22, 2022, as supplemented by letter dated June 27, 2022.
ADAMS Accession No	ML22115A104, ML22179A368.
Location in Application of NSHC	Pages 1–2 of Attachment 5.
Brief Description of Amendment(s)	The proposed amendment would modify Technical Specification surveillance requirement 4.6.2.1.d to change the frequency at which each reactor building spray nozzle must be verified to be unobstructed.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W.S. Blair, Senior Counsel, Dominion Energy Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	G. Ed Miller, 301–415–2481.

Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC; Duke Energy Carolinas, LLC; McGuire Nuclear Station, Units 1 and 2; Mecklenburg County, NC; Duke Energy Carolinas, LLC; Oconee Nuclear Station, Units 1, 2, and 3; Oconee County, SC; Duke Energy Progress, LLC; H. B. Robinson Steam Electric Plant, Unit No. 2; Darlington County, SC; Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC

Docket No(s)	50–413, 50–414, 50–369, 50–370, 50–269, 50–270, 50–287, 50–261, and 50–400.
Application date	February 1, 2023.
ADAMS Accession No	ML23032A162.
Location in Application of NSHC	Pages 14–16 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise the Surveillance Requirement (SR) Frequency for Reactor Coolant System pressure isolation valve operational leakage testing to reflect being in accordance with the Inservice Testing Program, as governed by 10 CFR 50.55a. Specifically, this change would update Technical Specification (TS) SR 3.4.14.1 for Catawba Nuclear Station (CNS), McGuire Nuclear Station (MNS), Oconee Nuclear Station, and H.B. Robinson Steam Electric Plant and TS SR 4.4.6.2.2 for Shearon Harris Nuclear Power Plant. An additional revision is proposed to CNS and MNS TS SR 3.3.1.8 to remove restrictive surveillance frequency content that impedes the full application of the Surveillance Frequency Control Program to establish the frequency for performance of the Channel Operational Test of select Reactor Trip System instrumentation.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tracey Mitchell LeRoy, Deputy General Counsel, Duke Energy Corporation, 4720 Piedmont Row Dr., Charlotte, NC 28210.
NRC Project Manager, Telephone Number	Shawn Williams, 301–415–1009.

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Units 1 and 2; Berrien County, MI

Docket No(s)	50–315, 50–316.
Application date	January 26, 2023.
ADAMS Accession No	ML23026A284.
Location in Application of NSHC	Pages 9–10 of Enclosure 2.
Brief Description of Amendment(s)	The proposed amendments would revise Technical Specification (TS) 3.3.3, ''Post Accident Monitoring (PAM) Instrumentation'' to remove Function 1, Neutron Flux, from the list of required PAM instrumentation.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Robert B. Haemer, Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.

Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL; Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s)	50–348, 50–364, 50–424, 50–425.
Application date	October 14, 2022, as supplemented by letter dated December 9, 2022.
ADAMS Accession No	ML22287A174, ML22343A255.
Location in Application of NSHC	Pages E–25 to E–27 of Enclosure.

LICENSE AMENDMENT REQUEST(S)—Continued

Brief Description of Amendment(s)	The proposed license amendment requests (LAR) would revise Technical Specifications (TS) 3.2.1, ''Heat Flux Hot Channel Factor ($F_Q(Z)$),'' to adopt the TS changes described in Appendix A or Appendix D (as applicable) of Westinghouse topical report WCAP–17661–P–A, Revision 1, to address the issues identified in Westinghouse Nuclear Safety Advisory Letter (NSAL)–09–5, Revision 1, ''Relaxed Axial Offset Control F_Q Technical Specification Actions,'' and NSAL–15–1, ''Heat Flux Hot Channel Factor Technical Specification Surveillance.'' The proposed LAR would revise the TSs, to the extent necessary, to adopt several technical specification task force (TSTF) travelers to align the Vogtle, Units 1 and 2, and Farley, Units 1 and 2, TSs with the F_Q formulations and required actions of TS 3.2.1B of NUREG–1431, ''Standard Technical Specifications Westinghouse Plants,'' Revision 4. Additionally, the licensee proposes in this LAR to change the Vogtle, Units 1 and 2, and Farley, Units 1 and 2, TSs 5.6.5, 3, to include WCAP–17661–P–A, Revision 1, in the list of the NRC approved methodologies used to develop the cycle specific Core Operating Limits Report.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 1 and 2; Burke County, GA

Docket No(s)	50–424, 50–425.
Application date	February 9, 2023.
ADAMS Accession No	ML23040A432.
Location in Application of NSHC	Pages E–4 to E–6 of Enclosure.
Brief Description of Amendment(s)	The proposed license amendment requests (LAR) would revise Vogtle, Units 1 and 2, Technical Specification (TS) 5.5.11, ''Ventilation Filter Testing Program (VFTP).'' The proposed LAR would revise the charcoal adsorber penetration acceptance criteria for the Control Room Emergency Filtration System (CREFS), item number 5.5.11.c from 0.2-percent to 0.5-percent.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA

Docket No(s)	52–025, 52–026.
Application date	October 14, 2022, as supplemented by letter dated December 9, 2022.
ADAMS Accession No	ML22287A174, ML22343A255.
Location in Application of NSHC	Pages E–25 to E–27 of Enclosure.
Brief Description of Amendment(s)	The proposed license amendment requests (LAR) would revise Technical Specifications (TS) 3.2.1, ''Heat Flux Hot Channel Factor ($F_Q(Z)$),'' to adopt the TS changes described in Appendix A or Appendix D (as applicable) of Westinghouse topical report WCAP–17661–P–A, Revision 1, to address the issues identified in Westinghouse Nuclear Safety Advisory Letter (NSAL)–09–5, Revision 1, ''Relaxed Axial Offset Control F_Q Technical Specification Actions,'' and NSAL–15–1, ''Heat Flux Hot Channel Factor Technical Specification Surveillance.'' Additionally, Southern Nuclear Operating Company, Inc. proposes in this LAR to change the Vogtle, Units 3 and 4, TS 5.6.3, ''Core Operating Limits Report (COLR),'' to include WCAP–17661–P–A, Revision 1, in the list of the NRC approved methodologies used to develop the cycle specific COLR.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA.

Docket No(s)	52–025, 52–026.
Application date	January 3, 2023.
ADAMS Accession No	ML23003A797.
Location in Application of NSHC	Pages 24–26 of Enclosure 1.
Brief Description of Amendment(s)	The proposed amendment requests would modify specific technical specifications (TS) for Units 3 and 4. The proposed change would revise Combined License Appendix A, TS 3.8.3, ''Inverters—Operating,'' to extend the completion time for required Action A.1 from 24 hours to 14 days. Additionally, TS 3.3.9, ''Engineered Safety Feature Actuation System (ESFAS) Manual Initiation,'' Condition C proposed change would replace misspelled ''Requried'' with ''Required.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	William Gleaves, 301–415–5848.

LICENSE AMENDMENT REQUEST(S)—Continued

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL; Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN	
Docket No(s)	50–259, 50–260, 50–296, 50–327, 50–328.
Application date	January 31, 2023.
ADAMS Accession No	ML23031A247.
Location in Application of NSHC	Pages 5–6 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would modify Technical Specification Surveillance Requirements (SRs) by adding exceptions to consider the SR met when automatic valves or dampers are locked, sealed, or otherwise secured in the actuated position, in order to consider the SR met. These modifications are in accordance with Technical Specification Task Force (TSTF)-541–A, Revision 2, ''Add Exceptions to Surveillance Requirements for Valves and Dampers Locked in the Actuated Position.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 6A West Tower, 400 West Summit Hill Drive, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Perry Buckberg, 301–415–1383.
Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Units 1 and 2; Louisa County, VA	
Docket No(s)	50–338, 50–339.
Application date	January 13, 2023.
ADAMS Accession No	ML23013A195.
Location in Application of NSHC	Pages 25 to 27 of Attachment 1.
Brief Description of Amendment(s)	The proposed amendments would relocate the Technical Support Center to a building outside the Protected Area, as described in the submittal.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W.S. Blair, Senior Counsel, Dominion Energy Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	G. Ed Miller, 301–415–2481.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)

Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Unit Nos. 1 and 2, Ogle County, IL; Constellation Energy Generation, LLC; R. E. Ginna Nuclear Power Plant; Wayne County, New York	
Docket No(s)	50–456, 50–457, 50–454, 50–455, 50–244.
Amendment Date	March 1, 2023.
ADAMS Accession No	ML22364A024.
Amendment No(s)	Braidwood (Unit 1) 231 (Unit 2) 231; Byron (Unit 1) 232 (Unit 2) 232; Ginna (Unit 1) 154.
Brief Description of Amendment(s)	The amendments are revised to be consistent with NRC-approved Technical Specifications Task Force (TSTF)-246 Traveler, Revision 0, ''Reactor Trip System Instrumentation, Technical Specification (TS) 3.3.1, Condition F, Completion Time,'' dated February 20, 1998, which revised the completion time of the limiting conditions for operation TS 3.3.1, Condition F, from 2 hours to 24 hours.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Constellation Energy Generation, LLC; Clinton Power Station, Unit No. 1; DeWitt County, IL	
Docket No(s)	50–461.
Amendment Date	March 1, 2023.
ADAMS Accession No	ML23031A297.
Amendment No(s)	248.
Brief Description of Amendment(s)	The amendment revised Technical Specification (TS) 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' TS 3.6.4.2, ''Secondary Containment Isolation Dampers (SCIDs),'' and TS 3.6.5.3, ''Drywell Isolation Valves,'' to allow isolation devices that are locked, sealed, or otherwise secured, to be verified by use of administrative means. The amendment is consistent with NRC-approved Technical Specification Task Force (TSTF) Traveler 269–A, Revision 2, ''Allow Administrative Means of Position Verification for Locked or Sealed Valves,'' dated June 27, 1999.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Constellation Energy Generation, LLC; Limerick Generating Station, Units 1 and 2; Montgomery County, PA	
Docket No(s)	50–352, 50–353.
Amendment Date	February 23, 2023.
ADAMS Accession No	ML23005A008.
Amendment No(s)	259 (Unit 1), 221 (Unit 2).
Brief Description of Amendment(s)	The amendments revised the technical specifications (TSs) table 3.3.2–1, Isolation Actuation Instrumentation, Trip Function 1.g for Main Steam Line Isolation to correct an administrative error introduced by a previous license amendment that modified TS 3.3.2, ''Isolation Actuation Instrumentation,'' among several changes.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL	
Docket No(s)	50–254, 50–265.
Amendment Date	February 6, 2023.
ADAMS Accession No	ML22347A241.
Amendment No(s)	Unit 1–294, Unit 2–290.
Brief Description of Amendment(s)	The amendments revised Technical Specification 5.6.5, ''Core Operating Limits Report (COLR)'' paragraph b, to add Report 0006N8642–P, Revision 1, ''Justification of PRIME Methodologies for Evaluating TOP [Thermal Overpower] and MOP [Mechanical Overpower] Compliance for non-GNF [Global Nuclear Fuel] Fuels,'' January 2022.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, SC	
Docket No(s)	50–395.
Amendment Date	February 21, 2023.
ADAMS Accession No	ML23012A015.
Amendment No(s)	224.
Brief Description of Amendment(s)	The amendment modified Technical Specification 4.6.2.1.d to change the frequency at which each reactor building spray nozzle must be verified to be unobstructed.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Perry Nuclear Power Plant, Unit No. 1; Lake County, OH	
Docket No(s)	50–440.
Amendment Date	February 3, 2023.
ADAMS Accession No	ML22284A144.
Amendment No(s)	200.
Brief Description of Amendment(s)	The amendment revised the methodology used for analysis of flooding hazards and drainage within the local intense precipitation domain and reflects the results of the new flood hazard protection scheme in the Updated Safety Analysis Report; and adds a new limiting condition for operation to the technical specifications (TSs) as TS 3.7.11, ''Flood Protection,'' and make conforming changes to the TS Table of Contents.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3; St. Charles Parish, LA	
Docket No(s)	50–382.
Amendment Date	February 17, 2023.
ADAMS Accession No	ML22322A109.
Amendment No(s)	270.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendment(s)	The amendment revised the technical specification requirements to permit the use of risk informed completion times in accordance with Technical Specifications Task Force (TSTF) Traveler (TSTF–505), Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF [Risk-Informed TSTF] Initiative 4b.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

National Institute of Standards and Technology, NIST Center for Neutron Research Test Reactor, Montgomery County, Maryland

Docket No(s)	50–184.
Amendment Date	February 1, 2023.
ADAMS Accession No	ML23020A911.
Amendment No(s)	14.
Brief Description of Amendment(s)	The amendment authorized the updated safety analysis report (SAR) for the National Bureau of Standards Test Reactor (NBSR). Specifically, the amendment modified the SAR to address potential impacts to the facility equipment, as described in chapter 5 of the SAR, as well as changes to the facility radiation sources, as described in chapter 11 of the SAR as a result of some debris remaining in the NBSR primary coolant system following the February 3, 2021, event.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Nine Mile Point Nuclear Station, LLC and Constellation Energy Generation, LLC; Nine Mile Point Nuclear Station, Unit 1; Oswego County, NY

Docket No(s)	50–220.
Amendment Date	February 28, 2023.
ADAMS Accession No	ML23025A412.
Amendment No(s)	248.
Brief Description of Amendment(s)	The amendment revised Nine Mile Point Nuclear Station, Unit 1, licensing basis analysis associated with the post-loss-of-coolant accident alternative source term analysis for containment leakage.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2; San Luis Obispo County, CA

Docket No(s)	50–275, 50–323.
Amendment Date	February 9, 2023.
ADAMS Accession No	ML23012A217.
Amendment No(s)	244 (Unit 1) and 245 (Unit 2).
Brief Description of Amendment(s)	The amendments revised technical specification definitions for engineered safety feature response time and reactor trip system response time to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–569, Revision 2, ''Revise Response Time Testing Definition.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

R.E. Ginna Nuclear Power Plant, LLC and Constellation Energy Generation, LLC; R.E. Ginna Nuclear Power Plant; Wayne County, NY

Docket No(s)	50–244.
Amendment Date	February 22, 2023.
ADAMS Accession No	ML23005A122.
Amendment No(s)	152.
Brief Description of Amendment(s)	The amendment revised the technical specification (TS) to the renewed facility operating license to TS 3.1.8, ''PHYSICS TESTS Exceptions—MODE 2,'' to allow one power range neutron flux channel to be bypassed when that channel is used during the performance of physics testing in MODE 2.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

R.E. Ginna Nuclear Power Plant, LLC and Constellation Energy Generation, LLC; R.E. Ginna Nuclear Power Plant; Wayne County, NY

Docket No(s)	50–244.
Amendment Date	February 23, 2023.
ADAMS Accession No	ML23005A176.
Amendment No(s)	153.
Brief Description of Amendment(s)	The amendment revised Technical Specification (TS) 3.7.10 ''Auxiliary Building Ventilation System'' deleted 3.7.10.3 Surveillance Requirements, deleted TS 5.5.10(c) Spent Fuel Pool (SFP) Charcoal Adsorber System for the Ventilation Filter Testing Program, additions to TS 5.6.5 ''CORE OPERATING LIMITS REPORT (COLR), and an update to TS 5.5.15 ''Containment Leakage Rate Testing Program.''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2; Appling County, GA	
Docket No(s)	50–321, 50–366.
Amendment Date	February 9, 2023.
ADAMS Accession No	ML22346A148.
Amendment No(s)	320 (Unit 1), 265 (Unit 2).
Brief Description of Amendment(s)	Southern Nuclear Operating Company (SNC) requested adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–208, Revision 0, ''Extension of Time to Reach Mode 2 in LCO 3.0.3.'' Specifically, the amendments extended the allowed time to reach Mode 2 in Limiting Condition for Operation 3.0.3 from 7 hours to 10 hours. In addition, SNC also requested an administrative change for deletion of a duplicate TS 3.4.10, on TS Page 3.4–25 of each unit's TS. These amendments also deleted the duplication.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2; Appling County, GA	
Docket No(s)	50–321, 50–366.
Amendment Date	February 15, 2023.
ADAMS Accession No	ML22363A393.
Amendment No(s)	321 (Unit 1), 266 (Unit 2).
Brief Description of Amendment(s)	The amendments revised Renewed Facility Operating License (RFOL) No. NPF–5 for Edwin I. Hatch Nuclear Plant (HNP) Unit 1 and RFOL No. DPR–57 for HNP Unit 2. This revision references an updated Table S–2 that reflects additional plant modifications necessary to comply with the National Fire Protection Association Standard (NFPA) 805 program.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Matagorda County, TX	
Docket No(s)	50–498, 50–499.
Amendment Date	February 6, 2023.
ADAMS Accession No	ML23015A001.
Amendment No(s)	225 (Unit 1) and 210 (Unit 2).
Brief Description of Amendment(s)	The amendments adopted Technical Specifications Task Force (TSTF) Traveler TSTF–554, Revision 1, ''Revise Reactor Coolant Leakage Requirements,'' which is an approved change to the Standard Technical Specifications (TSs), into the South Texas Project, Units 1 and 2 TSs. The amendments revised the TS definition of ''Leakage,'' clarified the requirements when pressure boundary leakage is detected and added a required action when pressure boundary leakage is identified. The model safety evaluation was approved by the NRC in a letter dated April 20, 2021 (ADAMS Package Accession No. ML21106A249), using the consolidated line-item improvement process.
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL	
Docket No(s)	50–259, 50–260, 50–296.
Amendment Date	March 16, 2022.
ADAMS Accession No	ML22020A228.
Amendment No(s)	320 (Unit 1); 343 (Unit 2); 303 (Unit 3).
Brief Description of Amendment(s)	The amendments revised Technical Specification (TS) 3.6.2.6 (correlates to boiling water reactor (BWR)/4 TS 3.6.2.5), ''Drywell-to-Suppression Chamber Differential,'' TS 3.6.3.2, ''Primary Containment Oxygen Concentration,'' based on TS Task Force (TSTF) Traveler TSTF–568, Revision 2, ''Revise Applicability of BWR/4 TS 3.6.2.5 and TS 3.6.3.2,'' (ADAMS Accession No. ML19141A122), and the associated NRC safety evaluation for TSTF–568 (ADAMS Accession No. ML19325C434).
Public Comments Received as to Proposed NSHC (Yes/No).	No.
Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN	
Docket No(s)	50–327, 50–328.
Amendment Date	February 6, 2023.
ADAMS Accession No	ML22334A073.
Amendment No(s)	363 (Unit 1), 357 (Unit 2).
Brief Description of Amendment(s)	The amendments incorporated the use of the peer reviewed, plant-specific Sequoyah Nuclear Plant Seismic Probabilistic Risk Assessment and Fire Probabilistic Risk Assessment models into the previously approved 10 CFR 50.69 categorization process.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO	
Docket No(s)	50–483.
Amendment Date	February 24, 2023.
ADAMS Accession No	ML22361A070.
Amendment No(s)	231.
Brief Description of Amendment(s)	The amendment authorized the following two changes to the Callaway Plant, Unit No. 1 Radiological Emergency Response Plan: (1) Removal of the 15-minute response goal/30-minute activation goal during ''Normal Work Hours'' and allow the current 75-minute response/90-minute activation goal for ''Off-Normal Hours'' to be the standard for all hours of the day and (2) Elimination of the 30-minute follow-up notification for the State of Missouri and emergency planning zone (EPZ) counties and implement a 60-minute follow-up notification until the plant conditions are relatively stable such that the follow-up notification frequency may be reduced to an agreed upon frequency, with the consensus of the State Emergency Management Agency and the EPZ counties, when event condition are relatively stable.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: March 9, 2023.

For the Nuclear Regulatory Commission.

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–05198 Filed 3–20–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of the Federal Advisory Committee Act, notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, April 20, 2023. There will be no in-person gathering for this meeting.

DATES: The virtual meeting will be held on April 20, 2023, beginning at 10:00 a.m. (ET).

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, 202–606–2858, or email *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION:

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public. Reports for calendar years 2008 to 2020 are posted at *http://www.opm.gov/fprac.* Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 7H31, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

This meeting is open to the public, with an audio option for listening. This notice sets forth the agenda for the meeting and the participation guidelines.

Meeting Agenda. The tentative agenda for this meeting includes the following Federal Wage System items:

- The definition of Monroe County, PA
- The definition of San Joaquin County, CA
- The definition of the Salinas-Monterey, CA, wage area
- The definition of the Puerto Rico wage area

Public Participation: The April 20, 2023, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the meeting. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''April 20, 2023'' no later than Tuesday, April 18, 2023.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by April 18, 2023.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

[FR Doc. 2023–05768 Filed 3–20–23; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0278]

Submission for Review: Renewal of a Previously Approved Information Collection, USA Staffing, Onboarding Features

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0278, USA Staffing, Onboarding).

DATES: Comments are encouraged and will be accepted until May 22, 2023. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection by one of the following means:

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

• *Email: bridget.dongarra@opm.gov.* Please put ''USA Staffing, Onboarding'' in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection request, with applicable supporting documentation, may be obtained by contacting the USA Staffing, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, Attention: Bridget Dongarra, or via electronic mail to *bridget.dongarra@opm.gov.*

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. USA Staffing is OPM's talent acquisition solution. Federal agencies use USA Staffing to onboard candidates for Federal positions while complying with appropriate rules and procedures. Federal agencies purchase the services of USA Staffing through an Interagency Agreement (IAA) under the provisions of the Revolving Fund, 5 U.S.C. 1304 (e)(1), which permits OPM to perform human resources management services for Federal agencies on a cost-recovery basis.

USA Staffing's public facing web page for new hires provides a single interface to submit data and forms required during the Federal onboarding process. New Hires are individuals selected for Federal employment but who have not yet entered on duty and authenticate at USA Staffing using their *USAJOBS.gov* accounts. USA Staffing captures the essential information Federal agencies require to onboard applicants for Federal jobs under the authority of sections 1104, 1302, 3301—3320, 3361, 3393, and 3394 of Title 5 United States Code.

This information collection was initially approved under an emergency authorization in pursuit of compliance with Executive Order (E.O.) 14043, titled ''Requiring Coronavirus Disease 2019 Vaccination for Federal Employees.'' This action seeks to reinstate the information collection independent of that Executive Order and instead focus on the regular business of the USA Staffing Onboarding system in gathering new hire information in pursuit of timely and efficient entry on duty actions. In addition, this collection will clarify the New Hire information elements collected by USA Staffing under its own OMB control number. This includes questions about basic identity, employment and service background, benefits enrollments, and payroll. Information for items which have their own approvals (such as the OF 306 and I–9 forms) are not included in this collection. The initial emergency clearance did not distinguish between these two contexts. Therefore, we invite comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of Personnel Management.

Title: USA Staffing, Onboarding.

OMB Number: 3206–0278.

Frequency: Annually.

Affected Public: Individuals.

Number of Respondents: 570,000.

Estimated Time per Respondent: 20 Minutes.

Total Burden Hours: 190,000.

U.S. Office of Personnel Management

Kellie Cosgrove Riley,

Executive Director, Office of Executive Secretariat and Privacy and Information Management.

[FR Doc. 2023–05765 Filed 3–20–23; 8:45 am]

BILLING CODE 6325–XX–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34856; File No. 812–15441]

Cloudflare, Inc.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under section 3(b)(2) of the Investment Company Act of 1940 (''Act'').

APPLICANT: Cloudflare, Inc.

SUMMARY OF APPLICATION: Applicant seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicant states that it is in the business of providing secure network cloud services.

DATES: *Filing Dates:* The application was filed on March 3, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request, by email if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on April 10, 2023, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicant: Thomas Seifert, Chief Financial Officer, Cloudflare, Inc., at *corporate-legal@cloudflare.com;* Amy Caiazza, at *acaiazza@wsgr.com.*

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. For Applicant's

representations, legal analysis, and conditions, please refer to Applicant's application, dated March 3, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

Applicant's Representations

1. Applicant states that it is a Delaware corporation formed in 2009 that, directly and through its wholly-owned subsidiaries,[1] is engaged in the business of providing secure network cloud services.

2. Applicant states that its business is highly capital intensive, requires R&D of new technologies, and does not involve the Applicant acquiring or retaining significant ''hard'' operating assets. Applicant states that it maintains significant cash reserves that it seeks to invest for purposes of conserving capital and providing liquidity until the funds are used in its cloud-based services and technology business. As described more fully in the application, Applicant states that it requires significant liquid capital primarily to: (i) fund R&D for new products and services, (ii) otherwise fund its operations, and (iii) make other capital expenditures in keeping with the growth of the Applicant's cloud-based services and technology business.

3. Applicant states that it has financed operations primarily through offerings of debt and equity securities, but ultimately seeks to generate cash from its operations to support its business. Applicant states that it seeks to preserve capital and maintain liquidity, pending the use of such capital for its operations, by investing in ''Capital Preservation Instruments.'' [2] Applicant states that it may in the future make strategic investments in ''other investments'' consistent with Rule 3a–8. Applicant states that such securities will not be acquired for speculative purposes.

Applicant's Legal Analysis

1. Applicant seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities and therefore is not an investment company as defined in the Act.

2. Section 3(a)(l)(A) of the Act defines the term ''investment company'' to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Section 3(a)(l)(C) of the Act further defines an investment company as an issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or section 3(c)(7) of the Act. Applicant states that it has never been, is not now, and does not propose to be, primarily engaged in the business of investing, reinvesting, owning, holding, or trading in securities. Applicant states, however, that it historically held and currently holds investment securities that exceed 40% of its total assets on an unconsolidated basis (exclusive of Government securities and cash items). Applicant states that it therefore may be an ''investment company'' pursuant to section 3(a)(l)(C) of the Act absent an exclusion or exemption.

3. Rule 3a–8 under the Act provides an exclusion from the definition of investment company if, among other factors, a company's R&D expenses are a substantial percentage of its total expenses for the last four fiscal quarters combined. While Applicant states that it believes that it complies with the conditions of Rule 3a–8, Applicant states that it is concerned that its R&D expenses, while substantial in absolute terms, may not always be considered substantial as a ratio of overall expenses. Although Applicant states that it anticipates R&D expenses to increase in absolute terms, such expenses are not anticipated to increase proportionately with Applicant's overall expenses, particularly given increases in expenses related to sales and marketing, the administration of a rapidly expanding employee base, and other administrative expenses. Applicant states that its R&D expenses have fluctuated between 18.34% and 25.04% of total expenses over the past six years, and Applicant expects R&D expenses to decrease relative to total expenses over time.

4. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(l)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. Applicant requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is not an investment company as defined in the Act.

5. In determining whether an issuer is ''primarily engaged'' in a non-investment company business under section 3(b)(2) of the Act, the Commission considers the following factors: (a) the company's historical development, (b) its public representations of policy, (c) the activities of its officers and directors, (d) the nature of its present assets, and (e) the sources of its present income.[3]

6. Applicant submits that it satisfies the criteria for issuance of an order under section 3(b)(2) of the Act because Applicant is primarily engaged in the business of providing secure network cloud services and is not in the business of investing, reinvesting, owning, holding or trading in securities.

a. *Historical Development.* Applicant states that, since its inception in 2009, Applicant has operated in the cloud software sector to develop comprehensive, scalable network cloud services for business use. Applicant's business has focused on the development of new such products, and

[1] Applicant states that 13 of its 24 wholly-owned subsidiaries conduct businesses that are integrally related to the Applicant's business, such as sales and marketing or research and development (''R&D'') activities in their respective jurisdictions. Applicant states that its remaining 11 subsidiaries are non-operating holding companies or non-operating companies with de minimis assets. Applicant further states that none of its subsidiaries meet the definition of an ''investment company'' in section 3(a) of the Act.

[2] As used in Applicant's application, Capital Preservation Instruments refers collectively to any cash items and securities that are held for the purpose of conserving Applicant's capital and liquidity until they are used by Applicant to support its business (as such business is described in Applicant's application). Such holdings are liquid (*i.e.,* can be readily sold), earn competitive market returns and present a low level of credit risk, including short-term investment grade securities, Government securities (as defined in section 2(a)(16) of the Act), securities of money market funds registered under the Act, and other cash items; but excluding investments in equity or speculative instruments.

[3] *Tonopah Mining Company of Nevada,* 26 SEC 426, 427 (1947).

Applicant has received global recognition as an innovative technology company.

b. *Public Representations of Policy.* Applicant states that it has consistently represented that it is engaged in the business of providing secure network cloud services. Applicant further states that it has never held and does not now hold itself out as an investment company within the meaning of the Act or as engaging in the business of investing, reinvesting, owning, holding, or trading in securities. Applicant explains that in its annual reports, stockholder letters, prospectuses, Commission filings, press releases, marketing materials, and on its investor website, its public representations consistently state its mission to help build a better internet by providing solutions to managing individual network hardware for companies of all sizes and growth. Applicant submits that its public representations make clear that shareholders invest in the Applicant's securities with the expectation of realizing gains from Applicant's development and sale of its suite of cloud services and not from returns on an investment portfolio. Applicant states that its only public representations regarding its investment securities are those required to be disclosed in public filings with the Commission.

c. *Activities of Officers and Directors.* Applicant represents that its officers and directors spend substantially all of their time managing the Applicant's cloud-based services and technology business. Applicant states that its cash management activities are managed internally by its Chief Financial Officer and externally by three investment managers, whose activities are supervised by the Chief Financial Officer. In addition, of the Applicant's approximately 3,181 employees (as of September 30, 2022), Applicant states that only five employees spend time on matters relating to the management of Applicant's Capital Preservation Instruments. Applicant states that none of its officers, directors or employees spends or proposes to devote more than 1% of his or her time, if even that, to management of Capital Preservation Instruments on behalf of the Applicant.

d. *Nature of Assets.* Applicant states that, as of September 30, 2022, Applicant's investment securities constituted approximately 65.4% of its total assets (excluding Government securities and cash items) on an unconsolidated basis.[4] Furthermore, Applicant states that as of September 30, 2022, 100% of its investment securities consist of Capital Preservation Instruments. Applicant uses its Capital Preservation Instruments to finance its continued operations. Applicant states that it may in the future make strategic investments in ''other investments'' consistent with Rule 3a–8. Applicant states, however, that no more than 10% of its total assets (exclusive of Government securities and cash items, including securities of money market funds registered under the Act) will consist of investment securities other than Capital Preservation Instruments.[5] Applicant uses current assets, including its Capital Preservation Instruments, to finance its continued R&D program and operations in connection with the development of the Applicant's software.

e. *Sources of Income and Revenue.* Applicant represents that since its inception it has carried net operating losses. Applicant states that it does, however, derive income from its investment securities. Applicant states that a review of its current source of revenues provides a more accurate review of its operating company status, particularly given the upward trend in recognizing substantially increased revenues due to sales of new subscriptions. Applicant states that it recognizes substantially all of its revenues from fees based on subscriptions and support. Applicant states that its revenues for the years ended December 31, 2019, 2020 and 2021 were $287 million, $431.1 million, and $656.4 million, respectively, on an unconsolidated basis. By contrast, Applicant states that its net investment income in 2019, 2020, and 2021 was $5.8 million, $6.6 million, and $2.0 million in, respectively. Applicant states that all such income was derived from Capital Preservation Instruments.[6] Applicant states that if net investment income were compared to its revenue, it would be less than 1.0% of revenue for the fiscal year ended December 31, 2021, and to less than 1.5% of revenue for the fiscal year ended December 31, 2020.

For the fiscal nine months ended September 30, 2022, Applicant earned $6.6 million of net investment income, an increase compared to $2.0 million for the fiscal year ended December 31, 2021. This nonetheless represents less than 1% of revenue for the fiscal nine months ended September 30, 2022. The increase in net investment income is due to the increase in interest rates in the fixed income markets.

7. Applicant asserts that its historical development, its public representations of policy, the activities of its officers and directors, the nature of its assets and its sources of revenue and income, as discussed in the application, demonstrate that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding or trading securities. Applicant thus asserts that it satisfies the criteria for issuing an order under section 3(b)(2) of the Act.

Applicant's Conditions

Applicant agrees that any order granted pursuant to the application will be subject to the following conditions:

1. Applicant will continue to use its accumulated cash and securities to support its primary business (as such business is described in Applicant's application);

2. Applicant will refrain from investing or trading in securities for speculative purposes; and

3. No more than 10% of Applicant's total assets will consist of investment securities other than Capital Preservation Instruments (as such capitalized term is defined in Applicant's application). For purposes of this condition, total assets excludes cash items (including securities issued by money market funds registered under the Act) and Government securities (as defined in section 2(a)(16) of the Act). This percentage is to be determined on an unconsolidated basis, except that Applicant should consolidate its financial statements with the financial statements of any wholly-owned subsidiaries.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: March 15, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05683 Filed 3–20–23; 8:45 am]

BILLING CODE 8011–01–P

[4] Applicant states that none of its subsidiaries hold any investment securities.

[5] Applicant states that it intends to calculate this percentage by consolidating its financial statement with the financial statements of its wholly-owned subsidiaries (but not with any majority-owned subsidiary that may be acquired in the future).

[6] Applicant states that it has not, and does not expect to, earn investment income from strategic investments.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97150; File No. SR–OCC–2023–002]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change by the Options Clearing Corporation Concerning the Amendment of Its Clearing Membership Standards

March 15, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2023, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would concern proposed changes to OCC's Clearing Membership Standards. The proposed rule change is submitted in Exhibits 5A and 5B to SR–OCC–2023–002. Material proposed to be added to OCC's By-Laws or Rules is marked by underlining and material proposed to be deleted is marked by strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Options Clearing Corporation (''OCC'') acts as the central counterparty clearing house (''CCP'') for all U.S. option exchanges and certain U.S. futures exchanges. OCC provides clearing services for options on equities, indices, Exchange Traded Funds (''ETFs'') and for certain futures products and options on futures products. Organizations become OCC Clearing Members to facilitate the clearing and settlement of their customer transactions or proprietary transactions through OCC. OCC also provides certain Clearing Members with the ability to novate stock loan transactions by acting as the counterparty to both sides of the transactions, guaranteeing that these obligations are fulfilled.

Over the past two decades, industry best practices as well as financial, operational, and systems/data obligations applicable to market participants and financial entities have continuously evolved. As part of this evolution, OCC was designated in 2012 as a systemically important financial market utility, or ''SIFMU,'' and along with this designation came heightened regulatory expectations. With these heightened expectations, there has been an increased focus on OCC and Clearing Member liquidity resources and uses, the ability to meet obligations during stressed market conditions, the ability to meet larger margin and Clearing Fund obligations due to growth in options trading, and a requirement to have a documented and robust risk management framework. After a comprehensive review of OCC's By-Laws and Rules in conjunction with changes in regulations, member risk practices and processes as well as other CCP Clearing Member standards, OCC determined it was necessary to amend, enhance and reorganize certain Clearing Member requirements to keep pace with these changes and ensure OCC continues to maintain a high level of market stability.

OCC's proposed changes to membership standards comprehensively address the heightened expectations around financial, operational and systems/data obligations. More specifically, the proposed rule changes would amend OCC's By-Laws and Rules addressing OCC's membership standards, including but not limited to regulation and regulatory authorization, governance, financial condition, financial reporting, staffing, third-party arrangements, general operational capabilities, statutory disqualifications, notification requirements and protective measures, as well as the minor rule violation framework. The proposed rule changes would improve OCC's existing financial and operational membership standards to further mitigate counterparty credit risk introduced by Clearing Members.

The proposed rule changes take a holistic review of existing membership standards, as opposed to one-off changes in response to new regulatory requirements. The proposed rule changes will enhance OCC's risk mitigation processes and practices by, for example, requiring Clearing Members to meet higher standards intended to mitigate risk, *e.g.,* through increased minimum capital requirements and heightened requirements around the qualification of financial, operational, and risk management personnel. Additionally, by proposing rules to expand OCC membership to new entity types and in additional jurisdictions, OCC will have the potential to increase the diversity of its Clearing Member population. Furthermore, proposing more robust notification requirements and expanded protective measures will allow more assurance that OCC is able to protect itself, its members, and the general public from emerging counterparty risks. OCC also believes that the proposed rule changes will provide greater clarity to Clearing Members and the broader public through the consolidation and simplification of OCC's membership requirements in OCC's By-Laws and Rules.

In particular, while the membership standards that OCC proposes to change are described in further detail herein, thematically, they consist of the following:

- expanding the list of institutions that may be eligible for membership as a Clearing Member;[4]
- expanding the available regulatory authorizations that may be granted to each type of institution that has been admitted to become a Clearing Member;[5]
- streamlining the membership application review and admission procedures;[6]
- amending the financial responsibility standards by consolidating initial and ongoing standards, raising the capital floor for existing categories of institutions and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC's current By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[4] *See infra* description of proposed Rule 201.

[5] *Id.*

[6] *See* infra descriptions of proposed Rules 203 and 204.

adopting capital standards for new categories of institutions; [7]

- amending the event-based and periodic reporting requirements for Clearing Members; [8]
- amending Clearing Member staffing requirements; [9]
- amending books and records requirements; [10]
- amending operational capability standards; [11]
- revising the process by which OCC reviews a notification that the Clearing Member is subject to statutory disqualification; [12]
- updating the minor rule violation disciplinary process; [13] and
- providing various other clarifying changes.

The proposed rule change generally would reflect each of these changes in the By-Laws and the Rules by modifying the provisions currently set forth in Article V of the By-Laws and Chapters II and III of the Rules and consolidating such provisions in new Chapters II and III of the Rules.[14] Below is a description of the proposed changes under the section headers reflecting the proposed new rules in Chapters II and III.[15]

Proposed Rule 201—Eligibility

Paragraphs (a) and (b)—Types of Memberships and Activities

Types of Clearing Members. Existing Article V of the By-Laws currently permits three different types of institutions to be eligible for clearing membership: (i) a broker-dealer registered in such capacity under section 15(b)(1) or (2) of the Exchange Act (a ''fully registered broker-dealer''); (ii) a futures commission merchant (an ''FCM'') registered in such capacity under section 4f(a)(1) of the Commodity Exchange Act (the ''CEA'') (a ''fully registered FCM''); and (iii) a Non-U.S. Securities Firm,[16] including but not limited to a Canadian investment dealer authorized and regulated in such capacity by the Investment Industry Regulatory Organization of Canada (''IIROC'').[17]

The proposed rule change would relocate the list of eligible institutions from Article V of the By-Laws to new Rule 201(a)(1) through (a)(3) (including a minor clarification to specifically reference Canadian Investment Dealers in proposed subparagraph (a)(3)) and expand the list of eligible institutions to include certain banks. Specifically with respect to banks, proposed Rule 201(a)(4) would provide that the following banks are eligible to become a Clearing Member: (i) a U.S. national bank registered with the Office of the Comptroller of the Currency for full-service operations; (ii) a U.S. state-chartered bank that is a member of the Federal Reserve System; and (iii) a similar non-U.S. bank registered with its home country national regulatory authority that conducts its activity with OCC through a Federal or State Branch or Agency (as defined in the International Banking Act of 1978) located in the United States (collectively, the ''eligible banks''). In order to be eligible, the bank must provide adequate assurance to OCC that it does not engage in activity that would require registration as a broker-dealer, FCM or any other relevant registration status. Such assurance would help ensure that an eligible bank is not violating applicable laws with respect to failing to register as a financial intermediary or any otherwise. Likewise, the bank must provide adequate assurance to OCC that it is not prohibited from contributing to OCC's Clearing Fund. Additionally, as a result of the relocation of Section 1 of Article V to proposed Rules, removal of reference to the first two sentences of Section 1 of Article V must be moved from Section 1 of Article XI.[18]

Types of Activities. Various provisions in Article V of the By-Laws set forth the categories of products and other regulatory authorizations that each type of institution that is a Clearing Member may engage in. As a general matter, the proposed rule change would incorporate such provisions in new Rule 201(b) (and Rule 302(e) with respect to Stock Loan programs), subject to minor modifications. More specifically:

- proposed Rule 201(b)(1) would provide that transactions in options other than over-the-counter (''OTC'') index options, futures options or commodity options may be cleared by a Clearing Member that is (i) a fully-registered broker-dealer, (ii) a Canadian Investment Dealer or other Non-U.S. Securities Firm, or (iii) an eligible bank;
- proposed Rule 201(b)(2) would provide that transactions in commodity futures, options and commodity futures options may be cleared by a Clearing Member that is (i) a fully registered FCM or (ii) otherwise exempt from such registration under the CEA and regulations of the Commodity Futures Trading Commission (the ''CFTC'');
- proposed Rule 201(b)(3) would provide that security futures transactions may be cleared by a Clearing Member that is (i) a fully registered broker-dealer that is also (A) a fully registered FCM, (B) a notice-registered as an FCM under section 4f(a)(2) of the CEA (a ''notice-registered FCM'') or (C) not required to register as an FCM under the CEA and the regulations of the CFTC, (ii) a fully registered FCM that is notice-registered as a broker-dealer under section 15(b)(11)(A) of the Exchange Act (a ''notice-registered broker-dealer''), (iii) a Canadian Investment Dealer or other Non-U.S. Securities Firm, or (iv) an eligible bank;
- proposed Rule 201(b)(6) would provide that OTC index options transactions may be cleared by a Clearing Member that (i) is a fully registered broker-dealer, a Canadian Investment Dealer or other Non-U.S. Securities Firm or an eligible bank, (ii) executes and maintains in effect the relevant agreements and other

[7] *See infra* description of proposed Rule 301.

[8] *See infra* descriptions of proposed Rules 306, 306A and 306B.

[9] *See infra* descriptions of proposed Rules 302 and 303.

[10] *See infra* description of proposed Rule 208.

[11] *See infra* description of proposed Rule 302 and 303.

[12] *See infra* descriptions of proposed Rules 204, 306A and 308.

[13] *See infra* description of proposed Rule 1203.

[14] In addition, a minor subset of the changes would appear in various other portions of the Rules, including Rules 101, 609, 1006, 1203, and 2201. The proposed rule change would eliminate Article V of the By-Laws.

[15] *Id.*

[16] Existing Article I of the By-Laws presently defines ''Non-U.S. Securities Firm,'' in relevant part, as a ''securities firm: (1) formed and operating under the laws of a country other than the United States; (2) with its principal place of business in that country; and (3) that is subject to the regulatory authority of that country's government or an agency or instrumentality thereof, or subject to the regulatory authority of an independent organization or exchange in that country. The term ''Non-U.S. Securities Firm'' shall not include any broker-dealer registered, or required to be registered, with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934, as amended or any futures commission merchant registered, or required to be registered, as such pursuant to section 4d of the Commodity Exchange Act, as amended.'' Under the proposed rule change, the provisions of this definition would be moved to Rule 101. *See infra* discussion on Additional Proposed Changes to Terms.

[17] The proposed rule change would incorporate in Rule 101 the definition of ''Canadian Investment Dealer'' as a Non-U.S. Securities Firm formed and operating under the laws of Canada or a province or territory thereof that is investment dealer under such laws, that is a dealer member of IIROC, and that has its principal place of business in Canada.

[18] Section 1 of Article XI, which requires approval of holders of OCC Common Stock for amendment to certain By-Law provisions as named in that section, states that stockholder approval is required to amend the first two sentences of Section 1 of Article V of OCC's By-Laws. With the relocation of Section 1 of Article V to proposed OCC Rules, shareholder consent to amend the first two sentences of Section 1 of Article V will no longer be required and therefore Section 1 of Article XI must be amended to remove reference to the first two sentences of Section 1 of Article V.

documents required by OCC, (iii) is a user of or participant in an OTC Trade Source for the purpose of affirming and submitting confirmed trades to OCC for clearance and (iv) meets such other requirements as OCC may specify;

- proposed Rule 201(b)(5) would provide that Stock Loans (which includes both Hedge Loans and Market Loans under the Stock Loan/Hedge Program and the Loan Market program, respectively) may be cleared by a Clearing Member that is (i) a fully-registered broker-dealer, (ii) a Canadian Investment Dealer or other Non-U.S. Securities Firm or (iii) an eligible bank;
- proposed Rule 302(f)(1) would provide that a Clearing Member participating in the Stock Loan/Hedge Program must (i) be a member of The Depository Trust Company (''DTC'') or be a Canadian Clearing Member on behalf of which the CDS Clearing and Depository Services Inc. (''CDS'') maintains an identifiable sub-account in a CDS account at the DTC and (ii) execute such agreements and other documents required by OCC; [19] and
- proposed Rule 302(f)(2) would provide that a Clearing Member participating in the Loan Market program must meet the Stock Loan/Hedge Program participation requirements set forth above and (i) be a U.S. Clearing Member or Clearing Member from any foreign country or jurisdiction approved by the Risk Committee, (ii) be a subscriber to such Loan Market with full access to services provided by the Loan Market, (iii) be a member of the DTC that has provided the DTC with written authorization to honor instructions issued by OCC against such Clearing Member's account at the DTC and (iv) execute such agreements and other documents required by OCC.[20]

Importantly, proposed Rule 201 would provide additional clarifications. In particular, proposed Rule 201(a)(4)(i) and (a)(5)(i) would restrict eligible banks to clear the products and participate in the programs listed above on a proprietary basis only. In addition, proposed Rule 201(b) would continue to require that Clearing Members be in compliance with all registration and other regulatory requirements applicable to clearing particular product types. Similarly, proposed Rule 201(b)(4) would maintain the existing requirement (relocated from Article V, Section 1(b) of the By-Laws) that no notice-registered broker-dealer may clear transactions or carry positions in cleared securities other than security futures. These clarifications are intended, in part, to help prevent a Clearing Member from violating the Exchange Act, the CEA or other applicable laws by acting as an unregistered intermediary on OCC.

Separately, similar to existing Article V, Section 1, paragraph (d) of the By-Laws, proposed Rule 201(b)(2) would require a Clearing Member that holds positions in physically settled futures or futures options other than security futures to be a member of the Exchange on which the products are traded.

Paragraph (c)—Approval Required for Each Type of Product

The proposed rule change would adopt as new Rule 201(c) the provisions currently set forth in existing Article V, Section 1, paragraph (c) of the By-Laws without any changes. Specifically, new Rule 201(c) would provide that the procedures of OCC may provide that a Clearing Member may not clear transactions in a particular type of product unless, in addition to satisfying any specific requirements applicable to such type of product set forth in the By-Laws and Rules, OCC has specifically approved the Clearing Member to clear such type of product.

Paragraphs (d) and (e)—Additional Standards

The proposed rule change would adopt as new Rules 201(d) and (e) a portion of the provisions currently set forth in existing Article V, Section 1, paragraph (a) and Interpretation and Policy .04 of the By-Laws with minor changes to reflect that the provisions apply to all Clearing Members (and not simply to applicants). The proposed rule change also would modify the provisions to specifically reference risk management capabilities and other standards as set forth in the Rules or such other qualifications and standards as OCC may promulgate.

Proposed Rule 201(d) would require each Clearing Member to meet such non-discriminatory standards of financial responsibility, operational capability, risk management capability, experience and competence as may from time to time be prescribed in the rules of OCC. Proposed paragraph (e) also would provide that in addition to the standards of financial responsibility, operational capability, risk management capability, and experience and competence, OCC will consider the criteria of the Fitness Standards for Directors, Clearing Members and Others, as adopted or amended by the Board of Directors from time to time, before approving any application for clearing membership and other standards as set forth in the Rules or such other qualifications and standards as OCC may promulgate.

Proposed Rule 202—Non-U.S. Entities and Foreign Financial Institution (''FFI'') Clearing Members

The proposed rule change would relocate existing Article V, Section 1, paragraph (e) of the By-Laws and Rule 310(d) to new Rule 202 with certain modifications designed to accommodate the admission of Non-U.S. Clearing Members other than Canadian Clearing Members. New Rule 202(a) and (b)(1) would amend existing Article V, Section 1, paragraph (e) of the By-Laws and Rule 310(d)(1) to more generally require that an applicant that, if admitted, would meet the definition of an FFI Clearing Member, must not conduct transactions or activities with or through OCC unless such transaction and activities will not result in the imposition of taxes or withholding or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and state income taxes imposed on the net income of OCC), and if such taxes or obligations would be imposed with respect to amounts paid or received by OCC but for the qualification of the applicant for a special U.S. or foreign tax status, such as a FATCA Compliant Qualified Intermediary Assuming Primary Withholding Responsibility, then the applicant's initial and ongoing membership will be conditioned on the applicant or Member qualifying for, maintaining, and documenting such status to the satisfaction of OCC. Under appropriate circumstances, where the applicant's regulatory and financial requirements are closely related to U.S. regulations, an applicant meeting the requirements of this section for the purposes of some products, such as stock loan or for give-up execution, but not others, or for transactions or activities in a specific capacity, such as an intermediary, may be admitted to conduct transactions or activities under limitations imposed by OCC. OCC also proposes to relocate existing Rules 310(d)(2)–(5) to new Rules 202(b)(2)–(5) with minor conforming changes. In addition, OCC would remove references to the defined terms Section 871(m) Effective Date and Section 871(m) Implementation Date as these Section 871(m) phase-in dates are no longer required in OCC's Rules.[21]

[19] *See infra* discussion on proposed Rule 302.

[20] *Id.*

[21] IRS Notice 2016–76 provides for staged implementation of Section 871(m). A copy of the Notice can be found here: (*https://www.irs.gov/pub/irs-drop/n-16-76.pdf*). The OCC issued Information Memo #40288 which announces the Section 871(m) Implementation Date as December 23, 2016. The information memo can be found on OCC's website:

OCC also proposes to add new Rule 202(d) to require that OCC will only admit Clearing Members that are non-U.S. entities from foreign jurisdictions that have been approved by the Risk Committee.[22] The proposed rule change would also adopt new paragraph (c) of Rule 202, which would require every Non-U.S. Clearing Member to provide all communications (oral or written), financial reports and other information requested by OCC in English, and to state monetary amounts in U.S. dollar equivalents indicating the conversion rate and date used.

Proposed Rule 203—Admission Procedures

The proposed rule change would consolidate in new Rule 203 the admission procedures and requirements currently set forth in existing Article V, Section 2 and Article V, Section 1, Interpretation and Policy .03, clause (e) of the By-Laws and modify such admission procedures and requirements. More specifically, similar to existing Article V, Section 2, paragraph (a), proposed Rule 203(a) would require Clearing Member applications to be in the form and contain such information as prescribed by OCC. Likewise, similar to existing Article V, Section 2, paragraph (a), proposed Rule 203(a) would authorize the Risk Committee or its designated delegates or agents to examine the books, records and workpapers of an applicant, take such evidence as they may deem necessary or employ such other means as they may deem desirable or appropriate to ascertain relevant facts bearing upon the applicant's qualifications.

Proposed Rule 203(a) also would designate the Risk Committee with responsibility to approve or disapprove applications for clearing membership. As set forth in proposed Rule 203(a), the procedures for disapproving an application would be the same as described in existing Article V, Section 2, paragraph (a). Specifically, if the Risk Committee proposes to disapprove an application, then OCC must adhere to the following procedures:

i. the Risk Committee must first furnish the applicant with a written statement of its proposed recommendation and the specific grounds for proposing to disapprove the application;

ii. the Risk Committee must give the applicant an opportunity to be heard and to present evidence on its own behalf;

iii. if the Risk Committee determines to disapprove the application, written notice of its decision, accompanied by a statement of the specific grounds for disapproval, must be mailed or delivered to the applicant;

iv. the applicant must have the right to present evidence as it may deem relevant to its application; and

v. a verbatim record must be kept of any hearing held pursuant hereto.

However, in contrast with existing Article V, Section 2, paragraph (a), the proposed rule change would remove the automatic delegation of authority to the CEO and COO to approve Clearing Member applications. This change is intended to help streamline the application review process and permit the Risk Committee to maintain discretion on which person(s) to delegate authority for purposes of review. The proposed rule change also would remove the requirement in existing Article V, Section 2, paragraph (c) to inform the Board of Directors of all applications for membership at its regularly scheduled meeting as all applications would now be approved by the Risk Committee as opposed to delegation to OCC management.

The proposed rule change also would adopt a new process for approving an applicant on an expedited basis under limited circumstances. Specifically, proposed Rule 203(b) would provide that the Risk Committee may approve an application on an expedited basis as appropriate for the protection of investors and the public interest. In connection with an expedited approval process, certain exceptions may be granted (i) for the applicant's compliance with OCC's membership standards for a reasonable period of time and/or (ii) from the general requirements set forth in OCC's internal policies, procedures and due diligence processes in reviewing Clearing Member applicants. This expedited approval process is intended to grant OCC flexibility under various unforeseen circumstances. Furthermore, because of the infrequent nature of these types of scenarios, OCC cannot envision or describe all events in which expedited approval would be required. Nevertheless, the use of expedited approval would be limited to scenarios in which time is of the essence for the protection of OCC, other OCC Clearing Members, and the public. For example, expedited approval would be appropriate in a circumstance where a suitable non-Clearing Member candidate seeks to take on the entire business of an existing Clearing Member that is in distress. In this example, expedited approval would serve to protect OCC, other OCC Clearing Members, and the public against the ramifications from the likely default of the Clearing Member in distress. In the event there was a significant financial impact in one of these scenarios, the ability to provide expedited approval would make it less likely that OCC would have to employ the resources—OCC's Minimum Contribution and other OCC liquid assets, the Clearing Fund, the EDCP Unvested Balance—that otherwise would have been used in the event the Clearing Member in distress defaulted. Additionally, the customers of the Clearing Member in distress would have certainty around the status and security of their accounts.

In addition, the proposed rule change would modify the provisions applicable to Clearing Members seeking to engage in clearing activities beyond the scope of their current authorizations with OCC. In particular, under proposed Rule 203(c), a Clearing Member's business expansion request may be reviewed and approved or disapproved by the CEO or the COO pursuant to OCC procedures. The Risk Committee must be notified at least ten business days in advance of any such approval/disapproval to determine whether the business expansion request should be reviewed by the Risk Committee.

Proposed Rule 204—Conditions to Admission

The proposed rule change would consolidate in new Rule 204 the conditions to admission provisions currently set forth in existing Article V, Section 3 and various other portions of Article V of the By-Laws. Each paragraph of proposed Rule 204 is described below.

Paragraph (a)—General Statement

Proposed Rule 204(a) would clarify that the Risk Committee will not approve any application for clearing membership if the applicant fails to meet the membership requirements and standards set forth in the Rules. This clarifying statement would replace many of the similar statements currently set forth in Article V of the By-Laws, including Section 1, Interpretations and Policies .01, .02, .03.

Paragraph (b)—Initial Contribution and Agreements

Proposed Rule 204(b) would adopt the provisions currently set forth in Article V, Section 3 of the By-Laws with only minor clarifying changes. Specifically,

(*https://infomemo.theocc.com/infomemo/search-memo*).

[22] Risk Committee review and approval would be based on the recommendation of OCC management after completing a non-U.S. jurisdiction review of regulatory, legal, and tax issues for each jurisdiction and product type.

proposed paragraph (b) would provide that, prior to admission as a Clearing Member, an applicant must deposit with OCC its initial contribution to the Clearing Fund in the amount required by the Risk Committee in accordance with Chapter X of the Rules. As compared to the provisions set forth in existing Article V, Section 3 of the By-Laws, proposed Rule 204(b) would clarify the Risk Committee's role in requiring the initial contribution.

In addition, proposed Rule 204(b) would require the applicant to sign and deliver to OCC an agreement:

i. to clear through OCC, either directly or through another Clearing Member, all of its confirmed trades and all other transactions which the By-Laws or the Rules may require to be cleared through OCC;

ii. to abide by all provisions of the By-Laws and the Rules and by all policies and procedures adopted pursuant thereto;

iii. that the By-Laws and the Rules constitute a part of the terms and conditions of every confirmed trade or other contract or transaction which the applicant, while a Clearing Member, may make or have with OCC, or with other Clearing Members in respect of cleared contracts, or which may be cleared or required to be cleared through OCC;

iv. to grant OCC all liens, rights and remedies set forth in the By-Laws and the Rules;

v. to pay to OCC all fees and other compensation provided by or pursuant to the By-Laws and the Rules for clearance and for all other services rendered by OCC to the applicant while a Clearing Member;

vi. to pay such fines as may be imposed on it in accordance with the By-Laws and the Rules;

vii. to permit inspection of its books, records, and workpapers at all times by the representatives of OCC and to furnish OCC with all information in respect of the applicant's business and transactions as OCC or its officers may require;

viii. to make such payments to or in respect of the Clearing Fund as may be required from time to time;

ix. to comply, in the case of Canadian Investment Dealers and other Non-U.S. Securities Firms, with the guidelines and restrictions imposed on domestic broker-dealers regarding the extension of credit, as provided by Section 7 of the Exchange Act and Regulation T promulgated thereunder by the Board of Governors of the Federal Reserve System, with respect to any customer account that includes cleared contracts issued by OCC; and

x. to comply, in the case of Canadian Investment Dealers and other Non-U.S. Securities Firms, with the Rules of the Financial Industry Regulatory Authority (''FINRA'') governing maintenance margin and cut-off times for the submission of exercise notices by customers.

As compared to the provisions set forth in existing Article V, Section 3 of the By-Laws, proposed Rule 204(b) would explicitly reference Canadian Investment Dealers in items ix and x above. In addition, OCC would eliminate the requirement in Article V, Section 3 of the By-Laws that Non-U.S. Securities Firms consent to the jurisdiction of Illinois courts and to the application of United States law in connection with any dispute with OCC arising from membership because this requirement is already addressed in Article IX, Section 10 of the By-Laws.

Paragraph (c)—Statutory Disqualifications

Proposed paragraph (c) would adopt and modify the statutory disqualification membership requirements currently set forth in existing Article V, Section 1(a). Specifically, proposed paragraph (c) would provide that the Risk Committee may disapprove an application of any applicant or person of the applicant subject to a ''Statutory Disqualification.'' In turn, the proposed rule change would revise Rule 101 to define the term ''Statutory Disqualification'' as (i) in the case of a fully registered broker-dealer, a statutory disqualification as defined in section 3 of the Exchange Act, (ii) in the case of a fully registered FCM, the applicant or Clearing Member or a principal thereof, as defined in CEA section 8a(2), is subject to statutory disqualification under CEA section 8a(2)–(4), or (iii) in the case of a Non-U.S. Securities Firm or bank, any similar provision of the laws or regulations applicable to such applicant or Clearing Member. In addition, similar to existing Article V, Section 1, paragraph (a) of the By-Laws, proposed Rule 204(c)(1) would provide that in cases in which the SEC, by order, directs as appropriate in the public interest, OCC will disapprove an application for clearing membership by any applicant or person of the applicant subject to a statutory disqualification. Separately, proposed subparagraph (c)(2) would obligate every applicant to notify OCC in writing if the applicant is or becomes subject to a statutory disqualification in accordance with the requirements of new Rule 306A(c).[23]

[23] *See infra* discussion on proposed Rule 306A.

Paragraph (d)—Just and Equitable Principles of Trade

Proposed paragraph (d) would adopt with no substantive changes the provisions currently set forth in existing Article V, Section 1, Interpretation and Policy .03, clause (b). Specifically, proposed paragraph (d) would permit the Risk Committee to disapprove an application if the applicant or any natural person associated with the applicant has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade.

Paragraph (e)—Satisfaction of Conditions

Proposed Rule 204(e) would provide that an applicant that has been approved for clearing membership subject to satisfaction of specified conditions must meet all conditions applicable to its admission within nine months from the date on which its application was approved, unless the Risk Committee prescribed an earlier date at the time the applicant was approved for clearing membership. As compared to Article V, Section 3, Interpretation and Policy .01, this proposed paragraph (e) would increase the maximum number of months from six months to nine months. The proposed rule change also would eliminate the authority to extend the deadline to no later than one year from the date on which the application originally was approved. These changes are intended to standardize and streamline the application process.

Paragraph (f)—Information From Other Regulators

Proposed paragraph (f) would permit the Risk Committee to take into consideration information provided by an applicant's Designated Examining Authority, designated self-regulatory organization (in the case of an applicant primarily regulated as an FCM), and other self-regulatory organizations to which an applicant is a member or has applied for membership when considering an applicant's compliance with OCC's membership requirements and standards and overall fitness to be a Clearing Member. As compared with existing Article V, Section 1, Interpretation and Policy .02, clause (c) of the By-Laws, proposed paragraph (f) would clarify that the Risk Committee may take such information into consideration irrespective of whether the Designated Examining Authority, designated self-regulatory organization or other self-regulatory organization

objects to the application. Proposed paragraph (f) also would clarify that the Risk Committee may take into consideration information from a self-regulatory organization that is not the applicant's Designated Examining Authority or designated self-regulatory organization, as the case may be.

Paragraph (g)—Additional Temporary Requirements

Proposed paragraph (g) would provide that if the Risk Committee determines an applicant's financial condition, operational capability, risk management capability, or experience and competence in relation to the business that the applicant is expected to transact with OCC, makes it necessary or advisable, for the protection of OCC, Clearing Members, or the general public, the Risk Committee may impose additional, temporary requirements for membership including, but not limited to, the imposition of protective measures pursuant to Rule 307.[24] Proposed paragraph (g) also would clarify that additional membership criteria may be imposed until the heightened risk presented by the Clearing Member is sufficiently reduced. In contrast with existing Article V, Section 1, Interpretation and Policy .06, proposed paragraph (g) and proposed Rule 307 [25] would set forth OCC's rights to impose protective measures under a uniform standard applicable to both applicants and existing Clearing Members.

Proposed Rule 205—Evidence of Authority

The proposed rule change would move the provisions set forth in existing Rule 202 to new Rule 205 and modify the language to clarify that OCC may rely on an electronic (or similar means) signature rather than relying on an original signature. Such a signature will have the same effect as a valid and binding original signature. This change is intended to better reflect evolving technology and the means by which signatures generally may be accepted.

Proposed Rule 206—Bank Accounts

The proposed rule change would move the provisions set forth in existing Rule 203 to new Rule 206 with no substantive changes.

Proposed Rule 207—Submission to and Retrieval of Items to the Corporation

The proposed rule change would combine and modify the provisions currently set forth in existing Rules 205 and 206 and move such provisions to new Rule 207. Specifically, the provisions in existing paragraphs (a) and (b) of Rules 205 and 206 would be combined and modified in proposed Rule 207(a), which would require Clearing Members to submit and retrieve instructions, notices, reports, data, and other items to or from OCC in accordance with procedures prescribed or approved by OCC. As compared to existing Rules 205(a)–(b) and 206(a)–(b), proposed Rule 207(a) would apply uniformly to items submitted or retrieved via electronic and non-electronic means. In addition, proposed paragraph (a) would clarify that items submitted to or retrieved by OCC by electronic data entry will be deemed to constitute ''writings'' for purposes of any applicable law. Similar to the changes to the provisions in proposed Rule 205, the changes in this proposed Rule 207(a) are intended to better reflect evolving technology.

Similarly, existing paragraphs (c) and (d) of Rule 205 would be combined and modified in proposed Rule 207(b), which would require timely submissions to OCC and permit OCC to disregard any untimely submission or correction. In addition, proposed paragraph (b) would provide that if unusual or unforeseen conditions prevent a Clearing Member from making a timely submission to OCC, then OCC may in its discretion (i) require the Clearing Member to submit the item by other means, and/or (ii) extend the applicable cut-off time by such period as OCC deems reasonable, practicable, and equitable under the circumstances. As compared to existing Rule 205(d), proposed Rule 207(b) would further clarify that it applies to any unusual or unforeseen conditions that, in fact, prevent a Clearing Member from making a timely submission via electronic or non-electronic means. Proposed paragraph (b) also would clarify that cut-off times for submission of exercise notices at expiration are governed by Rule 805, and by Article VI, Section 18 of the By-Laws.

Finally, existing Rule 206(c) would be modified and moved to proposed Rule 207(c), which would provide that if unusual or unforeseen conditions (including but not limited to power failures or equipment malfunctions) prevent OCC from making any timely submission or other notification to a Clearing Member, then OCC may in its discretion (i) make such item available to such Clearing Member by other means, and/or (ii) extend the applicable time frame by such period as OCC deems reasonable, practicable, and equitable under the circumstances. As compared to existing Rule 206(c), proposed Rule 207(c) would apply to submissions or other notifications via electronic or non-electronic means.

Proposed Rule 208—Records

The proposed rule change would move the provisions set forth in existing Rule 207 to new Rule 208 and streamline such provisions to clarify that the Clearing Member records retention requirements apply to all confirmed trade data required pursuant to the By-Laws and Rules, including confirmed trade information reported to OCC under Rule 401. The remaining provisions currently set forth in existing Rule 207 would remain unchanged (aside from relocating to new Rule 208).

Proposed Rule 209—Security Measures

The proposed rule change would move the provisions set forth in existing Rule 212 to new Rule 209 with modifications to remove references to authorization stamps, including the deletion of existing paragraph (b) and the removal of authorization stamp references in existing paragraph (c) as they are no longer used by OCC. The remaining provisions presently set forth in existing Rule 212 would remain unchanged (aside from relocating to new Rule 209).

Proposed Rule 210—Payment of Fees and Charges

The proposed rule change would move the provisions set forth in existing Rule 209 to new Rule 210 with modifications to clarify that any fine levied by OCC for a minor rule violation that has not been timely contested, as described in new Rule 1203(a), or fine levied pursuant to Chapter XII of the Rules will be due and payable immediately upon notice as opposed to within five business days following the end of each calendar month. The remaining provisions currently set forth in existing Rule 209 would remain unchanged (aside from relocating to new Rule 210).

Proposed Rule 211—Reports and Notices by the Corporation

The proposed rule change would combine and modify the provisions currently set forth in existing Rules 208, 211 and 213 and move such provisions to new Rule 211. Specifically, the provisions set forth in existing Rule 208 would be moved to proposed Rule 211(a) without any changes.

The provisions set forth in existing Rule 211 (including the Interpretation and Policy) would be moved to proposed Rule 211(b) and modified to clarify that OCC will provide all

[24] *See infra* description of proposed Rule 307.

[25] *Id.*

Clearing Members and other registered clearing agencies with the text or a description of any proposed rule change filed with the SEC or the CFTC and a statement of its purpose and effect on Clearing Members by posting proposed rule changes on its website. As compared to existing Rule 211 (including the Interpretation and Policy), proposed Rule 211(b) would eliminate the requirement to post the proposed rule change prior to filing the proposed rule change with the SEC or the CFTC, or as soon as possible thereafter.

Finally, the provisions in existing Rule 213 would be moved to proposed Rule 211(c) and modified to clarify that OCC will make available (rather than furnish) to each Clearing Member the audited financial statements and independent public accountant's report described in proposed paragraph (c). The remaining provisions currently set forth in existing Rules 211 and 213 would remain unchanged (aside from relocating to new Rule 211(b) and (c)).

Proposed Rule 212—Voluntary Termination of Membership

The proposed rule change would adopt new Rule 212 to address circumstances in which a Clearing Member may elect to voluntarily terminate its membership. Proposed paragraph (a) would provide that a Clearing Member may elect to voluntarily terminate its membership by providing written notice to OCC (''Voluntary Termination Notice'') that specifies a desired date for its withdrawal from membership (''Termination Date''). The terminating Clearing Member must close out or transfer all open positions with OCC by the Termination Date. Pursuant to proposed paragraph (c), if the Clearing Member does not close out or transfer all open positions by the specified Termination Date, the terminating Clearing Member must notify OCC of a new Termination Date, unless otherwise agreed upon by OCC.

With respect to the treatment of Clearing Fund deposits, proposed paragraph (b) would provide that OCC will retain the terminating Clearing Member's Clearing Fund contribution at least until final billing is complete during the calendar month immediately following the Termination Date. During this time, OCC may debit from the terminating Clearing Member's Clearing Fund contribution any outstanding payment obligations owed and not paid to OCC.

Proposed paragraph (b) also would clarify that a terminating Clearing Member's Clearing Fund contribution may be subject to a proportionate charge or use for purposes of a borrowing pursuant to Rule 1006 until the next monthly or intra-month sizing of the Clearing Fund. In such instance, OCC may retain the Clearing Member's Clearing Fund contribution until such time as it is no longer needed to satisfy its purpose and use under Rule 1006. However, a terminating Clearing Member will not be subject to replenishment or assessments under Rule 1006(h).

Finally, proposed paragraph (d) would clarify that any Voluntary Termination Notice provided during a cooling-off period implemented pursuant to Rule 1006(h) would be subject to the requirements of Rule 1006(h). Separately, the proposed rule change would revise Rule 1006(h) to specifically refer to ''Voluntary Termination Notice'' and make other administrative clean up changes.

Proposed Rule 301—Financial Responsibility

OCC's capital standards applicable to Clearing Members currently are set forth in existing Chapter III of the Rules. More specifically, existing Rule 301 sets forth the initial capital requirements that must be met by applicants for clearing membership, whereas existing Rule 302 sets forth the ongoing capital requirements that must be met by each Clearing Member.

The proposed rule change would replace existing Rules 301 and 302 with new Rule 301 and eliminate the distinction between initial and ongoing capital requirements. The proposed rule change also would modify the capital requirements for existing types of Clearing Members and introduce capital requirements for the new types of Clearing Members. Below is a description of each of the paragraphs in proposed Rule 301.

Paragraph (a)—General

Paragraph (a) of proposed Rule 301 would adopt a new general statement that clarifies that each Clearing Member, including an applicant for clearing membership, is required to meet the financial resource and responsibility requirements set forth in these Rules and such other qualifications and standards as OCC may promulgate. In addition, proposed paragraph (a) would provide that dollar amounts in Rule 301 refer to U.S. dollars.

Paragraph (b)—Minimum Capital

Proposed paragraph (b) would require Clearing Members to maintain the applicable minimum capital requirements set forth in subparagraphs (b)(1) through (b)(5). Proposed paragraph (b) also would incorporate the language currently set forth in existing Rule 302(a) that prohibits a Clearing Member with capital below its respective minimum capital requirement to clear an opening purchase transaction or opening sale transaction or enter into a Stock Loan. To provide time for existing Clearing Members to meet the proposed changes, OCC will provide a six-month grace period upon approval by the SEC of the proposal.

Below is a description of the minimum capital requirements that would be applicable to each type of Clearing Member. The proposed minimum capital requirements are intended to balance fair and open access to OCC with prudent financial qualifications for members and enhance the overall strength and resiliency of OCC and its ability to mitigate risk as a systemically important financial market utility.

Fully Registered Broker-Dealers. Existing Rule 301 sets forth initial requirements for fully registered broker-dealers to maintain minimum net capital equal to or greater than (i) $2.5 million, (ii) in the case of a broker-dealer not electing to operate pursuant to the alternative net capital requirements, 12½ percent of its aggregate indebtedness, or (iii) in the case of a broker-dealer electing to operate pursuant to the alternative net capital requirements, 5 percent of its aggregate debit items. Existing Rule 301 also sets forth an initial requirement that the aggregate principal amount of a Clearing Member's satisfactory subordination agreements (excluding those treated as equity capital) cannot initially exceed 70% of its debt equity total. The initial requirements apply until the later of (1) three months after the firm's admission to as a clearing member, or (2) twelve months after the firm commenced doing business as a broker-dealer. Separately, existing Rule 302 sets forth ongoing requirements for fully registered broker-dealers to maintain minimum net capital equal to or greater than (i) $2 million, (ii) in the case of a broker-dealer not electing to operate pursuant to the alternative net capital requirements, 6⅔ percent of its aggregate indebtedness, or (iii) in the case of a broker-dealer electing to operate pursuant to the alternative net capital requirements, 2 percent of its aggregate debit items.

Under proposed Rule 301(b)(1), there would be no differentiation between initial and ongoing standards. The single standard, applicable on both an initial and ongoing basis, would provide

that every Clearing Member that is a fully registered broker-dealer must maintain minimum net capital at least equal to the greater of (i) $10 million, (ii) in the case of a broker-dealer not electing to operate pursuant to the alternative net capital requirements, 6⅔ percent of its aggregate indebtedness (*i.e.,* aggregate indebtedness cannot exceed 1500% of net capital), or (iii) in the case of a broker-dealer electing to operate pursuant to the alternative net capital requirements, 2 percent of its aggregate debit items. OCC determined that the proposed minimum net capital requirement of $10 million was an appropriate amount based on OCC's clearance and risk management of non-linear products where volatility strongly influences margin and settlement obligation of Clearing Members. OCC selected an amount that provided greater security to ensure that Clearing Members have sufficient capital to meet margin, liquidity, and clearing fund obligations, but that also avoided creating an overly burdensome requirement on the vast majority of the existing OCC Clearing Member population.

Fully Registered FCMs. Existing Rule 301 sets forth initial requirements for fully registered FCMs to maintain minimum net capital at least equal to the greater of (i) $2.5 million, or (ii) any additional minimum financial requirements as are established by CFTC regulations. The initial standards apply until the later of (1) three months after the firm's admission as a clearing member, or (2) twelve months after the firm commenced doing business as an FCM. Separately, existing Rule 302 sets forth ongoing requirements for fully registered FCMs to maintain minimum net capital at least equal to the greater of (i) $2 million, or (ii) any additional minimum financial requirements as are established under the CEA.

Under proposed Rule 301(b)(2), there would be no differentiation between initial and ongoing standards. The single standard, applicable on both an initial and ongoing basis, would provide that every Clearing Member that is a fully registered FCM must maintain minimum net capital equal to the greater of (i) $10 million or (ii) any other minimum financial requirements established by regulation of the CFTC.

Canadian Investment Dealers. Existing Rule 301 sets forth initial requirements for Canadian Clearing Members to maintain an early warning reserve at least equal to (i) $2.5 million or (ii) such other amount determined by OCC. This initial standard applies until the later of (1) three months after the firm's admission as a clearing member, or (2) twelve months after the firm commenced doing business as a broker or dealer, as applicable. Separately, existing Rule 302 sets forth ongoing requirements for Canadian Clearing Members to maintain an early warning reserve at least equal to the greater of (i) $2 million or (ii) 2% of the Clearing Member's total margin required.

Under proposed Rule 301(b)(3)(i), there would be no differentiation between initial and ongoing standards. The single standard, applicable on both an initial and ongoing basis, would provide that every Clearing Member that is a Canadian Investment Dealer must maintain risk adjusted capital equal to the greater of (i) $10 million or (ii) 2% of total margin required.

Other Non-U.S. Securities Firms. Existing Rules 301 and 302 provide that each exempt Non-U.S. Clearing Member must comply with initial and ongoing requirements for the ratio of net capital to aggregate indebtedness as OCC may specify.

Proposed Rule 301(b)(3)(ii) would set forth a single standard, applicable on both an initial and ongoing basis, that requires every Non-U.S. Securities Firm that is not a Canadian Investment Dealer to maintain capital substantially similar to (adjusted) net capital required for fully-registered broker-dealers or fully-registered futures commission merchants equal to the greater of (i) $10 million or (ii) the amount required by the firm's applicable regulatory minimum requirements, including any and all required buffers, established by the regulatory authority of that country's government or an agency or instrumentality thereof. Further, proposed Rule 301(b)(3)(ii) would provide that if the Risk Committee prohibits the use of the non-U.S. jurisdiction's regulatory minimum requirements or chooses to supplement a non-U.S. jurisdiction's regulatory minimum requirements, then the Non-U.S. Securities Firm must maintain total equity greater than $25 million.

OCC initially intends to limit the admission of Non-U.S. Clearing Members to entities located in three Group of 7 jurisdictions—the United Kingdom, France, and Germany—because of the robust regulatory frameworks in each of those jurisdictions. However, in the future OCC may reevaluate whether it should consider admitting Non-U.S. Clearing Members from other jurisdictions, provided that if, after conducting a review of any such jurisdiction, OCC determines the jurisdiction supports a rigorous regulatory framework similar to the three countries mentioned above and satisfies any other risk related jurisdiction reviews undertaken during the member application process.

Banks. Existing OCC rules do not have minimum capital requirements for Clearing Members that are banks. Pursuant to the proposed rule change, new Rule 301(b)(4) would require each Clearing Member that is a U.S. bank (i) to maintain Tier 1 Capital of at least $500 million, (ii) to maintain a Tier 1 Capital Ratio greater than 6%, and (iii) be ''adequately-capitalized'' as measured by prompt corrective action (''PCA'') capital category ratios for National Banks and Federal Savings Associations. In addition, every U.S. branch of a non-U.S. bank that is a Clearing Member must be a branch of a non-U.S. bank that maintains (1) Tier 1 Capital of at least $500 million (or its equivalent in the relevant home country currency), (ii) a Tier 1 Capital Ratio greater than 6%, and (iii) that remains at least adequately capitalized as calculated or defined pursuant to the regulatory capital rules of the applicable banking regulatory authority of its home country.

Paragraph (c)—Dually Registered Clearing Members

Proposed paragraph (c) would clarify that if a Clearing Member is registered as a broker-dealer under section 15(b)(1) of the Exchange Act and also as an FCM under CEA section 4f(a)(1), the Clearing Member must comply with all applicable capital requirements.

Paragraph (d)—Extreme but Plausible Events and Contingency Planning

Existing Article V, Section 1, Interpretation and Policy .01 requires an applicant (i) to meet the initial financial requirements set forth in the Rules, (ii) to not have sustained certain pre-tax losses, (iii) to not be listed in a special surveillance list with the Securities Investor Protection Corporation (or not be subject to similar special financial surveillance procedures in accordance with the CEA), and (iv) to have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by OCC. Existing Rule 301(d) also requires every Clearing Member to have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions and maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise.

Proposed Rule 301(d) would replace existing Article V, Section 1, Interpretation and Policy .01 and Rule 301(d) and set forth a single standard, applicable on both an initial and ongoing basis, that requires every Clearing Member to have access to sufficient financial resources to meet obligations arising from clearing membership in extreme but plausible market conditions, as determined by OCC for such purposes, and maintain adequate procedures, including but not limited to contingency funding, to ensure that it is able to meet its obligations arising in connection with clearing membership when such obligations arise. Proposed Rule 301(d) would also be revised to clarify that contingency planning includes maintaining alternate settlement bank arrangements.

Interpretations and Policies

Existing Rule 307 sets forth definitions for the terms ''net capital,'' ''aggregate indebtedness,'' ''aggregate debit items,'' ''Examining Authority'' and ''customer.'' Proposed Rule 301, Interpretation and Policy .01 would adopt these definitions. Existing Rule 307 also sets forth definitions for the terms ''debt-equity total,'' ''satisfactory subordination agreement,'' and ''alternative net capital.'' Proposed Rule 306A, Interpretation and Policy .01, would adopt the definitions of ''debt-equity total'' and ''satisfactory subordination agreement.'' The term ''alternative net capital'' is not referenced in any OCC Rules and therefore, the definition of ''alternative net capital'' is being removed from OCC Rules due to the lack of any reference to this term.

Separately, proposed Rule 301, Interpretation and Policy .02 would adopt the provisions presently set forth in existing Rule 307, Interpretation and Policy .01 but strike the reference to Clearing Members that were Clearing Members on June 13, 2005 as no longer relevant.

Proposed Rule 302—Operational Capability

Clearing Members currently are subject to operational capability, experience, and competence standards set forth in various provisions in the By-Laws and the Rules, including Article V, Section 1, Interpretations and Policies .02, .07 and .07A of the By-Laws and Rule 201. The proposed rule change would consolidate these provisions in new Rule 302 and modify the provisions as described below.

Paragraph (a)—General

Paragraph (a) of proposed Rule 302 would adopt a new general statement that clarifies that each Clearing Member, including applicants for clearing membership, is required to meet the operational capability, experience, and competence standards set forth in the Rules and such other qualifications and standards as OCC may promulgate.

Paragraph (b)—Offices

Proposed paragraph (b) would incorporate the language currently set forth in existing Rule 201(a) to require each Clearing Member to maintain facilities for conducting business with OCC. Proposed paragraph (b) also would modify the language currently set forth in existing Rule 201(a) to eliminate the requirement that the representative must be at the Clearing Member's facilities and to reference regular and overnight business hours. Taken together, proposed paragraph (b) would require each Clearing Member to make available during hours specified by OCC, a representative of the Clearing Member authorized in the name of the Clearing Member to take all action necessary for conducting business with OCC during regular and overnight business hours. As revised, this provision is intended to reflect the realities and needs of Clearing Members and OCC by permitting the representative to work remotely during regular and overnight business hours.

Paragraph (c)—Books and Records

Proposed paragraph (c) would amend the language currently set forth in existing Article V, Section 1, Interpretation and Policy .02, clause (a) and simplify and standardize (to the extent possible) the recordkeeping requirements applicable to each type of Clearing Member. Under proposed paragraph (c), each Clearing Member would be required to maintain books and records in accordance with the requirements of its applicable regulatory agency, including but not limited to any applicable requirements under the Exchange Act, the CEA, or the requirements of any non-U.S. regulatory agency, and with such additional requirements as OCC may impose. Taken together, this proposed paragraph (c) is intended to prevent unnecessary regulatory burdens by permitting each Clearing Member to maintain applicable records in accordance with its existing regulatory requirements, as applicable.

Paragraph (d)—Ability To Discharge Responsibilities

Proposed paragraph (d) would adopt the language currently set forth in existing Article V, Section 1, Interpretation and Policy .02, clause (b) with minor changes to clarify that the provision applies to the facilities, systems and procedures of each Clearing Member. Proposed paragraph (d) also would clarify that each Clearing Member must be able to participate in applicable operational and default management activities.

Specifically, under proposed paragraph (d), each Clearing Member would be required to maintain facilities, systems and procedures that are operationally sufficient to discharge its functions as a Clearing Member in a timely and efficient manner, including (i) the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; (ii) the ability to fulfill collateral, payment, and delivery obligations as required by OCC; and (iii) the ability to participate in applicable operational and default management activities, including auctions, as may be required by OCC and in accordance with applicable laws and regulations.

Paragraph (e)—Physically-Settled Equity Options and Stock Futures

OCC Rule 901(a) requires that every Stock Clearing Member and every Clearing Member that effects transactions in physically-settled stock futures be a participant in good standing of the correspondent clearing corporation,[26] however this does not apply to (i) an Appointing Clearing Member that has an effective agreement with an Appointed Clearing Member, or (ii) a Canadian Clearing Member on behalf of which CDS maintains an identifiable subaccount in a CDS account at the correspondent clearing corporation. OCC proposes to relocate Rule 901(a) to proposed paragraph (e) with minor modifications. OCC would also make conforming updates throughout the Rules to update cross-references to various provisions of revised Rule 901.

Paragraph (f)—Stock Loan Programs

Proposed paragraph (f) would adopt the language currently set forth in existing Article V, Section 1, Interpretations and Policies .07 and .07A and modify the language to refer to

[26] Article I, Section I.C(33) of the OCC By-Laws defines ''correspondent clearing corporation'' to mean the National Securities Clearing Corporation or any successor thereto which, by agreement with the Corporation, provides facilities for settlements in respect of exercised option contracts or BOUNDs or in respect of delivery obligations arising from physically-settled stock futures.

Clearing Members ''participating in the Stock Loan/Hedge Program'' or ''participating in the Market Loan Program,'' as the case may be, rather than referring to ''Hedge Clearing Members'' and ''Market Loan Clearing Members.'' Proposed paragraph (e) also would clarify that each Clearing Member participating in OCC's Stock Loan programs must meet the additional operational requirements set forth in subparagraph (e)(1) and/or (e)(2), as applicable. The proposed change would also clarify that participants in the Market Loan Program must be either a U.S. Clearing Member or be located in any other foreign country or jurisdiction approved by the Risk Committee. The proposed change would allow OCC to approve Non-U.S. Clearing Members for the Market Loan Program provided that the Risk Committee has completed a comprehensive review of regulatory, legal, and tax issues for the relevant non-U.S. jurisdiction.[27]

Proposed Rule 303—Financial, Operations, and Risk Management Personnel

OCC's financial, operations and risk management personnel requirements currently are set forth in various provisions of the By-Laws and the Rules, including existing Article V, Section 1, Interpretations and Policies .03 and .05 of the By-Laws and Rule 214. The proposed rule change would consolidate and modify these requirements in new Rule 303. Below is a description of each of the paragraphs in proposed Rule 303.

Paragraph (a)—Substantial Experience

Proposed paragraph (a) would adopt certain of the provisions currently set forth in existing Article V, Section 1, Interpretations and Policies .03 and .05 of the By-Laws and modify the provisions to reference both applicants and Clearing Members. In addition, proposed paragraph (a) would contemplate ''third-party service providers'' more generally and eliminate references to facilities management agreements and Managing/Managed Clearing Members.

More specifically, proposed paragraph (a) would provide that every applicant and Clearing Member must employ personnel or maintain contractual arrangements with third-party service providers acceptable to OCC with substantial experience in clearing the kind(s) of cleared contracts applicable to the applicant or Clearing Member. Proposed paragraph (a) also would require every Clearing Member to maintain supervisory authority over all internal staff conducting business with the Corporation and over the activities and functions performed by third-party vendors.

The elimination of references to facilities management agreements and Managing/Managed Clearing Members is intended to provide greater flexibility on the provision of third-party services. However, notwithstanding this greater flexibility, Clearing Members are required to maintain supervisory authority over any third-party arrangements. In addition, such arrangements would be subject to the additional requirements set forth in proposed paragraph (d) of Rule 303.

Paragraph (b)—FinOps, CFOs and Similar Personnel

Proposed paragraph (b) would adopt certain of the provisions currently set forth in existing Article V, Section 1, Interpretation and Policy .03 and further specify the roles required for each type of Clearing Member. More specifically, proposed paragraph (b) would require each Clearing Member to employ personnel who are responsible for such Clearing Member's compliance with applicable net capital, recordkeeping, and other financial, operational, and risk management rules or maintain contractual arrangements with third-party service providers to perform such activities or functions. The employed personnel are:

- in the case of a fully registered broker-dealer, an individual registered with FINRA as a ''Limited Principal—Financial and Operations'';
- in the case of a fully registered FCM or other registrant registered under CEA section 4f that is not a fully registered broker-dealer, an individual serving as chief financial officer (''CFO'') or otherwise has the appropriate qualifications and is responsible for supervising the preparation of the applicant's financial reports; and
- in the case of a bank, Canadian Investment Dealer or other Non-U.S. Securities Firm, an individual serving as CFO or otherwise has the appropriate qualifications and is responsible for supervising the preparation of the applicant's financial reports.

Relatedly, the proposed rule change would remove the more prescriptive requirements currently set forth in Article V, Section 1, Interpretation and Policy .03, clause (d) relating to associated persons and/or key operations personnel serving as full-time employees. These amendments are intended to provide greater flexibility and reduce administrative burdens for OCC and its Clearing Members.[28]

Paragraph (c)—Clearing Operations Personnel

Proposed paragraph (c) would adopt certain of the provisions currently set forth in existing Rule 214(c) and (d) and modify the provisions to refer to both clearing operations personnel and adequate contractual arrangements with third-party service providers. Proposed paragraph (c) also would clarify that a Clearing Member must be able to discharge its functions in a timely and efficient manner. More specifically, proposed paragraph (c) would require each Clearing Member to ensure that it employs an appropriate number of clearing operations personnel or maintains adequate contractual arrangements with third-party service providers with the requisite capability, experience, and competency such that the Clearing Member can reasonably ensure that it is able to discharge its functions as a Clearing Member in a timely and efficient manner, including the ability to process expected volumes and values of transactions cleared by the Clearing Member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations as required by OCC, and the ability to participate in applicable operational and default management activities, including auctions, as may be required by OCC and in accordance with applicable laws and regulations. Proposed paragraph (c) also would require that each Clearing Member must submit to the OCC a list of the clearing operations personnel it employs in such form as is acceptable to OCC, including, without limitation, the names, titles, primary offices, email addresses, and business phone numbers for all such personnel.

Paragraph (d)—Contractual Arrangements With Third-Party Personnel

Proposed paragraph (d) would adopt certain of the provisions currently set forth in existing Article V, Section 1, Interpretation and Policy .05 and further provide for ''third-party service providers'' more generally, beyond the facilities management arrangements as currently described in OCC's By-Laws and Rules, and require related arrangements to permit due diligence by OCC. Proposed paragraph (d) also

[27] *See supra* note 20.

[28] For example, the proposed change would eliminate the need for certain staffing exemptions/waivers currently contemplated by Article V, Section 1, Interpretation and Policy .03.

would clarify that it applies to contractual arrangements with third-party service providers used to satisfy the requirements of Rule 302 and this Rule 303. Under proposed paragraph (d), any such arrangement must (1) clearly set forth the specific services to be performed by the third-party service providers on behalf of a Clearing Member and the respective duties and obligations of the third-party service provider and Clearing Member, (2) provide that the agreement will not be terminated until 30 days after written notice of such termination is provided by the Clearing Member to OCC and (3) provide OCC with the authority and ability to perform initial and ongoing due diligence on the service provider.

Paragraph (e)—Replacing Relevant Personnel and Other Arrangements

Proposed paragraph (e) would adopt certain of the provisions currently set forth in existing Rule 214, Interpretation and Policy .02 and clarify that it applies to the separation or termination of personnel and third-party service providers. In particular, proposed paragraph (e) would provide that upon a separation or termination of agreement with a third-party service provider between the only personnel or third-party service provider who meets the requirements of Rule 303(b) and the Clearing Member, then the Clearing Member is granted a grace period of three months to return to compliance with the Rule.

Proposed Rule 304—Operational and Default Management Testing

Existing Rule 218 sets forth various requirements relating to business continuity and disaster recovery testing and default management testing. The proposed rule change would move the provisions in existing Rule 218 to new Rule 304 with only minor changes. Specifically, proposed Rule 304(a) would contain a new introductory sentence that clarifies that OCC will periodically designate Clearing Members required to participate in business continuity and disaster recovery testing. The remaining provisions contained in proposed Rule 304(a) would be substantively identical to the provisions contained in existing Rule 218(a) and (b). Similarly, the provisions contained in proposed Rule 304(b) would be substantively identical to the provisions currently set forth in existing Rule 218(c).

Proposed Rule 304(c) would set forth a new paragraph that provides that OCC may require Clearing Members to participate in other operational and connectivity testing and related reporting requirements (such as reporting the test results to OCC in a manner specified by OCC) that OCC deems necessary to ensure the continuing operational capability of the Clearing Members and the continuing ability of OCC to perform its clearing, settlement, and risk management activities.

Proposed Rule 305—Clearing Member Risk Management

Existing Rule 311 sets forth requirements pertaining to the risk management program obligations of Clearing Members. The proposed rule change would move the provisions in existing Rule 311 to new Rule 305 and modify the provisions consistent with CFTC Rule 39.13(h)(5)(ii).[29] More specifically, similar to existing Rule 311(a), proposed Rule 305(a) would require each Clearing Member to maintain current written risk management policies and procedures that address the risks the Clearing Member may pose to OCC. In addition, proposed Rule 305(a) would contain an additional provision that is not contained in existing Rule 311(a), which clarifies that OCC may review the risk management policies, procedures, and practices of each Clearing Member on a periodic basis and may take appropriate action to address concerns identified in such reviews, including but not limited to the imposition of protective measures pursuant to Rule 307. This additional provision would be added to better address the requirements applicable to registered derivatives clearing organizations under CFTC Rule 39.13(h)(5)(ii).

Proposed Rule 305(b) would require each Clearing Member to provide to OCC such information and documentation as may be requested by OCC from time to time regarding such Clearing Member's risk management policies, procedures, and practices. As compared to existing Rule 311(b), the language in proposed Rule 305(b) would be streamlined to not include any examples of such information and documentation addressed by this paragraph.

Proposed Rule 305(c) would be identical to the provisions set forth in existing Rule 311(c).

Proposed Rule 306—Notification and Reporting Requirements

OCC's notification and reporting requirements currently are set forth in various provisions of the By-Laws and the Rules, including existing Article V, Section 1, Interpretations and Policies .03 and .07 of the By-Laws and Rules 201(b), 215, 216, 217(b), 303, 306, 308 and 310(a)–(c). The proposed rule change would consolidate and modify these requirements in new Rules 306, 306A and 306B.

Proposed Rule 306 would set forth a broad statement clarifying that each Clearing Member must provide to OCC such notices, reports, documentation, or other information required in the Rules and any other requirements promulgated by OCC.

Proposed Rules 306A and 306B are described below.

Proposed Rule 306A—Event-Based Reporting

Proposed Rule 306A would set forth the event-based reporting requirements and incorporate and modify the provisions currently set forth in existing Article V, Section 1, Interpretations and Policies .03 (clause (c)) and .07 of the By-Laws and existing Rules 201(b), 215, 217(b) and 303. Each paragraph in proposed Rule 306A is described below.

Paragraph (a)—Early Warning Notices

Proposed paragraph (a) would adopt many of the provisions in existing Rule 303 and set forth the early warning notice requirements for Clearing Members. Under proposed paragraph (a), a Clearing Member would be required to notify an officer of OCC promptly, and in any event, prior to 3:00 p.m. Central Time (4:00 p.m. Eastern Time) of the next business day in writing, if any of the circumstances described in subparagraphs (a)(1) through (a)(6) are met, as applicable. As compared to existing Rule 303(a), proposed Rule 306A(a) would simplify the notification requirement by specifying that one (rather than two) notices must be provided to an officer of OCC prior to the applicable deadline.

Proposed subparagraph (a)(1) would apply broadly to all types of Clearing Members, whereas proposed subparagraphs (a)(2) through (a)(6) would apply to specific types of Clearing Members. Each proposed subparagraph is described in greater detail below.

All Clearing Members. Proposed subparagraph (a)(1) would apply to all Clearing Members and is mostly identical to existing Rule 303(a). Under proposed subparagraph (a)(1), the early warning notice requirement would be triggered if a Clearing Member notifies, is required to notify, or receives notice from, any regulatory organization (as currently defined in the Rule 303, Interpretation and Policy .01 and would be relocated to Chapter I of the Rules) of any financial difficulty affecting the

[29] 17 CFR 39.13(h)(5)(ii).

Clearing Member or of any failure by the Clearing Member to be in compliance with the financial responsibility rules or capital requirements of any regulatory organization. The new rule would be revised to clarify that it would apply to operational difficulty/responsibilities in addition to financial. Further, proposed subparagraph (a)(1) would clarify that any notice, whether written or otherwise, from a regulatory organization informing a Clearing Member that it may fail to be in compliance with the financial responsibility rules or capital requirements of the regulatory organization unless it takes corrective action, or informing it that it has triggered any provision in the nature of an early warning provision contained in any such rule or regulation, constitutes a notice for purposes of this subparagraph. The early warning notification to OCC must include a copy of any written notice provided or received by the Clearing Member from the regulatory organization.

Fully Registered Broker-Dealers

Proposed subparagraph (a)(2) would apply to fully registered broker-dealer Clearing Members and adopt many of the provisions set forth in existing Rule 303(b). Under proposed subparagraph (a)(2)(A), the early warning notice requirement would be triggered if the Clearing Member's net capital becomes less than the greater of (i) $12 million, (ii) in the case of a Clearing Member electing to operate pursuant to the aggregate indebtedness standard, 10 percent of its aggregate indebtedness (*i.e.,* aggregate indebtedness exceeds 1000% of net capital), or (iii) in the case of a Clearing Member electing to operate pursuant to the alternative standard, 5% of its aggregate debit items. As compared to existing Rule 303(b)(1), proposed Rule 306A(a)(2)(A)(i) would require early warning notification to the extent that net capital becomes less than $12 million (rather than $2.5 million) to reflect the change in net capital requirements as described in the description of proposed Rule 301 above.

Under proposed subparagraph (a)(2)(B), the early warning notice requirement would be triggered if the aggregate principal amount of such Clearing Member's satisfactory subordination agreements (other than such agreements which qualify as equity capital under SEC Rule 15c3–1(d)) exceeds 70% of such Clearing Member's debt-equity total. This new subparagraph (a)(2)(B) would be substantively identical to existing Rule 303(b)(2).

Under proposed subparagraph (a)(2)(C), the early warning notice requirement would be triggered if the Clearing Member carries accounts of listed options specialists in accordance with SEC Rule 15c3–1(c)(2)(x) or has elected to operate pursuant to SEC Rule 15c3–1(a)(6), and the sum of deductions and required equity, as applicable, exceeds 1000% of such Clearing Member's net capital. This new subparagraph (a)(2)(C) would replace the provisions currently set forth in existing Rule 303(b)(3)–(4).

Under proposed subparagraph (a)(2)(E), the early warning notice requirement would be triggered if the Clearing Member's Examining Authority has granted to such Clearing Member, pursuant to SEC Rule 15c3–1(c)(2)(v)(C), an extension of any time period provided for resolving short securities differences under SEC Rule 15c3–1(c)(2)(v)(A). This new subparagraph (a)(2)(E) would be substantively identical to existing Rule 303(b)(5).

Under proposed subparagraph (a)(2)(F), the early warning notice requirement would be triggered if the Clearing Member has provided any notice as required by SEC Rule 15c3–1(e)(1)(iv). Proposed subparagraph (a)(2)(F) also would require the Clearing Member to provide OCC with a copy of the notice so provided. This new subparagraph (a)(2)(F) would be substantively identical to existing Rule 303(b)(6).

Fully Registered FCMs. Proposed subparagraph (a)(3) would apply to fully registered FCM Clearing Members and replace the provisions set forth in existing Rule 303(c). Under proposed subparagraph (a)(3)(A), the early warning notice requirement would be triggered if the Clearing Member's adjusted net capital becomes less than the greater of $12 million or the early warning adjusted net capital requirements established by CFTC Rule 1.12(b). Under proposed subparagraph (a)(3)(B), the early warning notice requirement would be triggered if the Clearing Member has provided any notice as required by CFTC Rule 1.12(c), (d), (f)(3), (f)(4), (g) or (m). Proposed subparagraph (a)(3)(B) also requires the Clearing Member to provide OCC with a copy of the notice so provided.

Canadian Investment Dealers. Proposed subparagraph (a)(4)(A) would apply to Canadian Investment Dealer Clearing Members and (together with proposed subparagraph (a)(4)(B)) replace the provisions set forth in existing Rule 303(d). Under proposed subparagraph (a)(4)(A), the early warning notice requirement would be triggered if the Clearing Member's risk adjusted capital is less than $12 million or 5% of total margin required or if it subject to an early warning designation under the financial and operational rules established by IIROC.

Other Non-U.S. Securities Firms. Proposed subparagraph (a)(4)(B) would apply to all other Non-U.S. Securities Firm (*i.e.,* non-Canadian Investment Dealer) Clearing Members and (together with proposed subparagraph (a)(4)(A)) replace the provisions set forth in existing Rule 303(d). Under proposed subparagraph (a)(4)(B)(i), the early warning notice requirement would be triggered if the Clearing Member's net capital equivalent is less than the greater of (a) $12 million or (b) the early warning amount required by the firm's applicable regulatory requirements established by the regulatory authority of that country's government or an agency or instrumentality thereof.

Under proposed subparagraph (a)(4)(B)(ii), the early warning notice requirement would be triggered if the Clearing Member's total equity is less than $30 million and the Risk Committee has prohibited the Clearing Member from using its non-U.S. jurisdiction's regulatory minimum and early warning requirements or otherwise requires the Clearing Member to supplement its non-U.S. jurisdiction's regulatory minimum or early warning requirements.

All Non-U.S. Securities Firms

Under proposed subparagraph (a)(4)(C), the early warning notice requirement would be triggered if the Clearing Member violates any rule or regulation relating to financial responsibility or protection of customer property of its Non-U.S. Regulatory Agency (or any other governmental agency or instrumentality or independent organization or exchange to whose authority it is subject).

Under proposed subparagraph (a)(4)(D), the early warning notice requirement would be triggered if the Clearing Member receives any notice (whether written or otherwise) from its Non-U.S. Regulatory Agency (or any other agency, instrumentality, organization or exchange) (a) alleging a violation of any such rule or regulation, (b) informing it that it may violate any such rule or regulation unless it takes corrective action, or (c) informing it that it has triggered any provision in the nature of an early warning provision contained in any such rule or regulation.

Finally, proposed subparagraph (a)(4)(D) would permit OCC to specify other events that may trigger an early warning notice requirement.

Banks. Proposed subparagraph (a)(5) would apply to all Clearing Members that are Banks. Under proposed subparagraph (a)(5)(A), the early warning notice requirement would be triggered if the Clearing Member's Tier 1 Capital is less than $600 million. Under proposed subparagraph (a)(5)(B), the early warning notice requirement would be triggered if the Clearing Member's Tier 1 Capital Ratio is less than the greater of (i) 7% or (ii) its Tier 1 Capital Ratio regulatory requirement plus 1%, or if the Clearing Member is deemed undercapitalized as calculated or defined pursuant to the regulatory capital rules of the applicable banking regulatory authority of its home country. Under proposed subparagraph (a)(5)(C), the early warning notice requirement would be triggered if the Clearing Member violates any rule or regulation relating to financial responsibility or protection of customer property of its regulatory agency (or any other governmental agency or instrumentality or independent organization or exchange to whose authority it is subject). Under proposed subparagraph (a)(5)(D), the early warning notice requirement would be triggered if the Clearing Member receives any notice (whether written or otherwise) from such agency (or any other agency, instrumentality, organization or exchange) (a) alleging a violation of any such rule or regulation, (b) informing it that it may violate any such rule or regulation unless it takes corrective action, or (c) informing it that it has triggered any provision in the nature of an early warning provision contained in any such rule or regulation. Finally, proposed subparagraph (a)(5)(E) would permit OCC to specify other events that may trigger an early warning notice requirement. In addition, the provisions of existing Rule 303, Interpretation and Policy .01 would be relocated to Chapter I of the Rules. Existing Rule 303, Interpretation and Policy .02 would be removed given that OCC no longer maintains different standards for exempt Non-U.S. Clearing Members.

Paragraph (b)—Notice of Material Changes and Information Requests

Proposed paragraph (b) would adopt many of the provisions in existing Rule 215 and set forth the notice requirements for material changes and other information requests. New subparagraphs (b)(1) through (b)(6) are described in greater detail below.

Subparagraph (b)(1). Proposed subparagraph (b)(1) would adopt the provisions currently set forth in existing Rule 215(a) without any changes. Under proposed subparagraph (b)(1), each Clearing Member would be required to provide OCC with prompt prior written notice of any enumerated material change in its form of organization or ownership structure.

Subparagraph (b)(2). Proposed subparagraph (b)(2) would modify and expand on the provisions currently set forth in existing Rule 215(b). Specifically, proposed subparagraph (b)(2) would require each Clearing Member to give OCC prompt written notice [30] of material operational or financial changes, including: (A) a change in location of clearing operations; [31] (B) a change in location of its facilities or offices maintained pursuant to Rule 302; [32] (C) a change in any personnel of the Clearing Member responsible for ensuring that the Clearing Member is able to fulfill its obligations as a Clearing Member pursuant to Rule 303(c); [33] (D) a new or revoked stock settlement relationship with another Clearing Member or CDS; (E) a change in the Clearing Member's independent public accountant; (F) a change in Non-U.S. Clearing Member's regulatory capital standards; (G) experiencing operational difficulties or is non-compliant with operational capability requirements; (H) current or hindsight customer reserve or customer segregation deficiencies; (I) a change in registration status or regulatory authorization; (J) current or hindsight net capital deficiencies; (K) a change in date for its fiscal year-end; or (L) if a Canadian Clearing Member participating in the Stock Loan/Hedge Program knows or reasonably expects that CDS will cease, or if CDS has ceased, to act on behalf of the Canadian Clearing Member with respect to effecting delivery orders for stock loan and stock borrow transactions.[34]

Subparagraph (b)(3). Proposed subparagraph (b)(3) (together with proposed subparagraph (b)(4)) would replace existing Rule 215(c). Under proposed subparagraph (b)(3), each Clearing Member must give OCC prompt prior written notice of its intention to enter into, terminate, or alter its outsourcing activities.

Subparagraph (b)(4). Proposed subparagraph (b)(4) (together with proposed subparagraph (b)(3)) would replace existing Rule 215(c). Under proposed subparagraph (b)(4), each Clearing Member must give OCC prompt written notice if separation or termination of an agreement occurs between the only personnel, associated person, or third-party provider who performs activities necessary to meet the requirements of the Rules or is otherwise critical to ensuring that the Clearing Member is able to clear and settle confirmed trades in account types for which it is approved.

Subparagraph (b)(5). Proposed subparagraph (b)(5) would add a new event-based reporting requirement that each Clearing Member notify OCC within 30 days (i) of its independent auditor issuing a qualified opinion of its financial statements or (ii) of notification by its independent auditor that the independent auditor has identified a material weakness in an internal control over financial reporting.

Subparagraph (b)(6). Proposed subparagraph (b)(6) would modify existing Rule 215(d) to provide that each Clearing Member must, within the time period reasonably prescribed by OCC, furnish to OCC such documents and information as OCC may from time to time require pursuant to Chapters II and III of the Rules.

Paragraph (c)—Statutory Disqualifications

Proposed paragraph (c) would adopt and modify the provisions in existing Rule 217(b) and set forth the statutory disqualification notification requirements for Clearing Members. Under proposed paragraph (c), a Clearing Member, or applicant for clearing membership, that is or becomes subject to a statutory disqualification

[30] As compared to existing Rule 215(b), proposed Rule 306A(b)(2) would require ''prompt'' written notice (rather than 30-day prior written notice). This change is intended to grant greater flexibility and reduce burdens associated with providing advance notice. Moreover, OCC believes certain changes that currently require prior notice (*i.e.,* planned changes) generally are not planned so prior notice is not practical.

[31] As compared to existing Rule 215(b)(1), proposed Rule 306A(b)(2)(A) would not require advance notification of planned changes. This change is intended to grant greater flexibility and reduce burdens associated with providing advance notice. Also, in OCC's experience, these changes are generally not planned so prior notice is not practical.

[32] As compared to existing Rule 215(b)(2), proposed Rule 306A(b)(2)(B) would not require advance notification of planned changes. This change is intended to grant greater flexibility and reduce burdens associated with providing advance notice. Also, in OCC's experience, these changes are generally not planned so prior notice is not practical. Proposed Rule 306A(b)(2)(B) also would clarify that it applies to both facilities and offices, and therefore would replace existing Rule 201(b) and existing Rule 215(b)(2).

[33] As compared to existing Rule 215(b)(3), proposed Rule 306A(b)(2)(C) would not require advance notification of planned changes. This change is intended to grant greater flexibility and reduce burdens associated with providing advance notice. Also, in OCC's experience, these changes are generally not planned so prior notice is not practical.

[34] Proposed Rule 306A(b)(2)(L) would modify and replace a portion of existing Article V, Section 1, Interpretation and Policy .07.

must notify OCC in writing as soon as practicable upon learning of such statutory disqualification and in any event within 20 business days thereafter. As compared to existing Rule 217(b), proposed Rule 306A(c) would require notification within 20 business days (rather than 5 business days).

Proposed paragraph (c) also would require the Clearing Member to further accompany such notification with information and forms, including amendments thereto, related to the statutory disqualification received from or provided to the SEC, the CFTC or any self-regulatory organization and clarify that this includes (i) a copy of the order, judgment, letter of acceptance, waiver and consent, or other document evidencing the event that gave rise to the statutory disqualification, and (ii) any amended Form BD, FINRA Form MC–400A, any written response to a National Futures Association (''NFA'') Rule 504 Notice of Intent or other written request for relief addressed to such self-regulatory organization. Clearing Members that are not members of FINRA or NFA are required to provide OCC with, at a minimum, the information contained in FINRA Form MC–400A in addition to any forms filed with any self-regulatory organization or regulatory agency with respect to a statutory disqualification or similar provision of the laws or regulations applicable to such Clearing Member or applicant. OCC would eliminate the requirement that the member or applicant provide OCC notification of whether or not the Clearing Member is seeking to continue being a Clearing Member notwithstanding the statutory disqualification as this is assumed in most cases.

Proposed Rule 306B—Periodic Reporting

Proposed Rule 306B would set forth the periodic reporting requirements and incorporate and modify the provisions presently set forth in existing Rules 216, 306, 308 and 310(a)–(c). Each paragraph in new Rule 306B is described below.

Paragraph (a)—Financial Reports

Proposed paragraph (a) would replace existing portions of Rules 306 and 310(a)–(c) with a more concise set of requirements applicable to each type of Clearing Member. Proposed paragraph (a) also would clarify that OCC has broad discretion in requiring each Clearing Member to submit statements of its financial condition at such times and in such manner as shall be prescribed by OCC. Below are the requirements applicable to each type of Clearing Member.

Fully Registered Broker-Dealers. Every Clearing Member that is a fully registered broker-dealer would be required to file with OCC a true and complete copy of Part II, IIA, or any other variation of SEC Form X–17A–5 within 20 business days after the end of each month (regardless of whether or not such Clearing Member is required to prepare or file such report on a monthly basis with another regulatory or self-regulatory organization). As compared to existing Rule 306, proposed Rule 306B(a) would include a 20-business-day filing deadline that is standardized for Clearing Members that are fully registered broker-dealers, FCMs or Canadian Investment Dealers.

Fully Registered FCMs. Every Clearing Member that is a fully registered FCM would be required to file with OCC a true and complete copy of CFTC Form 1–FR–FCM within 20 business days after the end of each month (regardless of whether or not such Clearing Member is required to prepare or file such report on a monthly basis with another regulatory or self-regulatory organization). As noted above, proposed Rule 306B(a) would include a 20-business-day filing deadline that is standardized for Clearing Members that are fully registered broker-dealers, FCMs or Canadian Investment Dealers.

Canadian Investment Dealers. Every Clearing Member that is a Canadian Investment Dealer would be required to file with OCC a true and complete copy of its Form 1 of the International Financial Reporting Standards within the later of (i) 20 business days after the end of each month or (ii) monthly deadlines established by IIROC. As noted above, proposed Rule 306B(a) would include a 20-business-day filing deadline that is standardized for Clearing Members that are fully registered broker-dealers, FCMs or Canadian Investment Dealers.

Other Non-U.S. Securities Firms. Every Clearing Member that is a Non-U.S. Securities Firm (excluding Canadian Investment Dealers) would be required to file with OCC true and complete copies of such financial reports specified by OCC at the same time such report is filed with a primary regulatory authority. The financial reports must be prepared in accordance with its non-U.S. regulatory requirement.

U.S. Banks. Every Clearing Member that is a U.S. national bank or state-chartered bank would be required to file with OCC a copy of its Consolidated Report of Condition and Income (''Call Report'') and (to the extent not contained within such Call Reports) information containing each of its capital levels, ratios, and requirements due at same time it is filed with primary regulatory authority. If the Clearing Member is not required to file a Call Report, then it must file with OCC a copy of its unaudited quarterly financial statements as provided to the state regulatory authority having jurisdiction over the participant, containing each of its capital levels, ratios, and requirements.

Non-U.S. Banks. Every Clearing Member that is a non-U.S. bank would be required to file with OCC true and complete copies of such financial reports specified by OCC at the same time such report is filed with a primary regulatory authority. The financial reports must be prepared in accordance with its non-U.S. regulatory requirements. OCC would also relocate Rule 306, Interpretation and Policy .03, which requires that OCC deliver to the CFTC upon request any financial report provided to OCC pursuant to Rule 306 by a Clearing Member that is not an FCM, to new Rule 306B(a)(8).

Paragraph (b)—Annual Audited Financial Statements

Proposed paragraph (b) would replace existing Rule 308 with an annual requirement that is standardized across types of Clearing Members. Specifically, proposed paragraph (b) would require each Clearing Member to provide to OCC a complete copy of its annual audited financial statements, including reports on material inadequacies and internal control, prepared in accordance with its regulatory requirements and with generally accepted auditing standards of the country in which such Clearing Member has its principal place of business within 60 calendar days of the end of its fiscal year.

Paragraph (c)—Early or More Frequent Reporting

Proposed paragraph (c) would replace portions of existing Rule 306 with standardized requirements relating to early and more frequent reporting. Specifically, if a Clearing Member is required to file a financial report on an earlier date or on a more frequent basis than is required under Rule 306B, then the Clearing Member is required to file with OCC a true and complete copy of each such report at the same time it is filed with its relevant regulatory authority. In addition, proposed paragraph (c) would provide that OCC may, in its discretion, require more frequent financial reporting in such form as OCC may specify or other financial statements in such form or detail as may be prescribed by OCC, including for purposes of assessing

whether the Clearing Member is meeting the financial requirements for clearing membership on an ongoing basis.

Paragraph (d)—Extensions

Proposed paragraph (d) would replace a portion of existing Rule 308(e) with a standardized provision that permits OCC, in its discretion, to recognize an extension or later deadline granted by the Clearing Member's relevant regulatory authority for financial reports required under Rule 306B, provided that such extension is not issued on a permanent basis and a copy of such extension is filed with OCC in a timely manner.

Paragraph (e)—Large Trader Reports

Proposed paragraph (e) would adopt the provisions set forth in existing Rule 216 with no substantive changes.

Proposed Rule 307—Protective Measures

Existing Rules 304 and 305 set forth certain restrictions on distributions, transactions, positions and activities. The proposed rule change would adopt a more comprehensive set of protective measures in proposed Rules 307, 307A, 307B and 307C and incorporate, as appropriate, the provisions presently set forth in existing Rules 304 and 305.

Proposed Rule 307 would grant broad authority to OCC to impose protective measures on any Clearing Member or applicant for clearing membership that (i) is approaching or does not meet OCC's minimum membership standards or fails to provide information required under Chapters II and III of the Rules such that OCC is unable to determine whether it meets the minimum membership standards, (ii) presents increased credit or liquidity risk to OCC, (iii) is subject to enhanced monitoring and surveillance under OCC's watch level reporting process, or (iv) whose financial condition, operational capability, or risk management capability otherwise makes it necessary or advisable, for the protection of OCC, other Clearing Members, or the general public.

Below is a description of proposed Rules 307A, 307B and 307C.

Rule 307A—Restrictions on Distributions

The provisions in existing Rule 304 have been moved to new Rule 307A and modified to clarify that it applies to all qualified regulatory capital and to eliminate separate distribution restriction requirements for Non-U.S. Clearing Members. Proposed Rule 307A(a) would prohibit a Clearing Member from withdrawing qualified regulatory capital (by dividend, distribution, or otherwise) without the prior written authorization of OCC if, after giving effect to such withdrawal, an early warning condition specified in Rule 306A(a)(2), through (6) would exist with respect to such Clearing Member, or such withdrawal would be inconsistent with a Clearing Member's regulatory requirements. In turn, proposed Rule 307A(b) would provide that OCC may prohibit Clearing Members from withdrawing qualified regulatory capital (by dividend, distribution, or otherwise) if such Clearing Member is subject to enhanced monitoring and surveillance under OCC's watch level reporting process or the distribution in question could result in increased credit or liquidity risk to OCC.

Existing Rule 304C(c) and Rule 304, Interpretations and Policies .01 through .03, which set forth provisions applicable to exempt Non-U.S. Clearing Members, have been removed given the broad applicability of new Rule 307B(a) and (b) to all Clearing Members and the elimination of the concept of ''exempt Non-U.S. Clearing Members'' in OCC's Rules. OCC believes that proposed changes would simplify and clarify its Rules concerning restrictions on distributions and ensure that these protective measures are being applied consistently for all Clearing Members.

Rule 307B—Restrictions on Certain Transactions, Positions and Activities

The provisions in existing Rule 305 would be moved to proposed Rule 307B and modified to improve general readability and to further clarify OCC's broad authority to impose protective measures with respect to transactions, open positions and related activities. In particular, the provisions in existing Rule 305(a) and (b) would be combined in proposed Rule 307B(a) and streamlined to provide that if circumstances warrant the imposition of protective measures under Rule 307, then the CEO or COO (or if unavailable, a Designated Officer) may impose the following restrictions on a Clearing Member:

i. prohibit or impose limitations on clearing transactions that increase credit or liquidity risk;

ii. require such Clearing Member to reduce, eliminate, or hedge any existing positions presenting increased credit, liquidity or operational risk to OCC;

iii. require such Clearing Member to transfer any existing positions or accounts maintained or carried by such Clearing Member to another Clearing Member; and/or

iv. restrict such Clearing Member's outsourced activities or activities as an Appointed Clearing Member or prohibit such Clearing Member from engaging in such activities or to impose such limitations on such activities as such officer deems necessary or appropriate in the circumstances.

The provisions set forth in existing Rule 305(c) and (d) have been moved to new Rule 307B(b) and (c) with no substantive changes. Separately, existing Rule 305, Interpretations and Policies .01 through .12, which provide a non-exhaustive list of examples of situations in which OCC may take protective measures under existing Rule 305, have been removed to improve general readability of the Rule and to further clarify the breadth of OCC's authority to impose protective measures with respect to transactions, open positions and related activities.

Rule 307C—Additional Operational, Personnel, Financial Resource and Risk Management Requirements

The proposed rule change would adopt new Rule 307C to permit OCC to impose protective measures in the form of additional operational, personnel, financial resource or risk management requirements. Proposed Rule 307C also sets forth a non-exclusive list of such protective measures, including:

i. requiring Clearing Members to maintain higher minimum capital amounts than those required by Rule 301;

ii. requiring Clearing Members to adjust the amount or composition of margin or Clearing Fund deposits, including but not limited to requiring the deposit of additional margin or requiring Clearing Members to satisfy a specified portion of their margin or Clearing Fund requirements in cash or other assets with comparatively less risk; [35]

iii. requiring Clearing Members to add new personnel or provide additional training to existing personnel to enhance the capability, experience, and competence of operational, financial reporting, or risk management personnel;

iv. requiring Clearing Members to execute an agreement with a third-party service provider determined to be acceptable to OCC that will be in effect

[35] This proposed change would in part incorporate authority in existing Rule 604(g), which allows OCC to require Clearing Members to deposit a specified amount of cash to satisfy its margin requirements as a protective measure if such Clearing Member is determined to present increased credit risk and is subject to enhanced monitoring and surveillance under OCC's watch level reporting process. As a result, Rule 604(g) would be deleted from OCC's Rules.

until such time that the Clearing Member is able to comply with OCC's operational, personnel or risk management standards;

v. requiring Clearing Members to enhance its risk management policies, procedures and practices;

vi. requiring alternate methods of electronic connection (*e.g.,* lease line) due to operational risk concerns; and

vii. requiring additional reporting of its financial or operational condition at such intervals and in such detail as determined by OCC.

OCC believes the proposed protective measures are necessary and appropriate to ensure that OCC is able to manage the range of risks (including credit risk, liquidity risk, and operational risk) that may be presented by Clearing Members that do not comply, or are in danger of no longer complying, with OCC's minimum membership standards, present increased credit or liquidity risk to OCC, or are otherwise experiencing difficulties in their financial condition, operational capability, or risk management capability.

Rule 308—Statutory Disqualification

Existing Rule 217 sets forth OCC's requirements with respect to Clearing Members (or their principals in the case of CFTC-registered FCMs) subject to a statutory disqualification. The proposed rule change would relocate or otherwise eliminate the provisions set forth in Rule 217 as follows:

• The provisions set forth in existing Rule 217(a) would be moved to proposed Rule 308(a) and revised to further provide that in the event a Clearing Member is or becomes subject to a Statutory Disqualification,[36] OCC may impose protective measures under Rule 307 or conduct a hearing or institute a disciplinary proceeding in accordance with Chapter XII of the Rules to determine whether to no longer permit such Clearing Member to continue its membership. Proposed paragraph (a) also would clarify that OCC will not permit such Clearing Member to continue its membership if so ordered by the SEC.

• As discussed in the description of proposed Rule 306A, the provisions in existing Rule 217(b) would be moved to proposed Rule 306A(c) with modifications.

• The provisions in existing Rule 217(f) would be moved to proposed Rule 308(b) and modified to clarify that OCC may ''delay a final decision regarding a Clearing Member's Statutory Disqualification'' (rather than waiving provisions of existing Rule 217) until any proceeding before another self-regulatory organization is concluded. The remaining portions of existing Rule 217(f) would remain unchanged (aside from relocating to proposed Rule 308(b)).

• The provisions in existing Rule 217(c)–(e) and (g) would be removed as unnecessary for two reasons: (1) proposed paragraph (a) provides broad authority to conduct a hearing or institute a disciplinary proceeding in accordance with Chapter XII of the Rules to determine whether to no longer permit such Clearing Member to continue its membership; and (2) OCC's minor rule violation plan in proposed Rule 1203 would include any failure to timely notify OCC of any Statutory Disqualification under new Rule 306A(c).

Proposed Changes to Rule 609—Intra-Day Margin

OCC proposes minor modifications to Rule 609, including conforming changes to clarify that OCC may require the deposit of intra-day margin in response to changes in a Clearing Member's operational or risk management condition in addition to its financial condition. The proposed change is intended to reflect the more expansive protective measure rules proposed in new Rule 307C. OCC would also remove references to unspecified ''officers'' of OCC as these details are included in OCC's internal policies and procedures.

Proposed Rule 1203—Minor Rule Violations

The rules applicable to minor rule violations currently are set forth primarily in existing Rule 1201(b), Rule 215(f), and Interpretation and Policy .01 of Rule 215(f). Existing Rule 1201(b) sets forth OCC's ''plan'' (within the meaning of Rule 19d–1(c)(2)) for the disposition of ''minor rule violations'' and generally provides that OCC may impose a fine of $2,500 or less for any violation designated in the By-Laws or the Rules as a minor rule violation. Any such fine for a minor rule violation would be in lieu of commencing a disciplinary proceeding pursuant to Rule 1201(a). Existing Rule 1201(b) also sets forth processes for imposing and contesting fines for minor rule violations. The proposed rule change would move the provisions set forth in existing Rule 1201(b) to new Rule 1203(a) with no substantive changes.

The proposed rule change also would remove existing Rule 215, Interpretation and Policy .01 and replace it with new Rule 1203(b) and (c), which modify the list of violations that may constitute a minor rule violation to include the following:

• a violation of Rule 205 (relating to the filing of a certified list of authorized signatories);

• a violation of Rule 208 (relating to maintaining records of confirmed trade data);

• a violation of Rule 210 (relating to the payment of fees and charges);

• a violation of Rule 302(b)–(d) (relating to the operational capability to maintain offices, books and records and the ability to appropriately discharge responsibilities);

• a violation of Rule 303(c) (relating to the timely provision of information concerning personnel);

• a violation of Rule 306A(a)(2)(e) (relating to providing OCC with a copy of any notice required under paragraph (e)(1)(iv) of Rule 15c3–1);

• a violation of Rule 306A(b) (relating to providing notice of material changes and information requests);

• a violation of Rule 306A(c) (relating to providing notice of any statutory disqualification);

• a violation of Rule 306B (relating to the filing of periodic reports); and

• any failure to provide such other requested documents and information in connection with the requirements of Chapters II and III of the Rules, including, but not limited to, financial, regulatory and other information, as OCC may in its discretion require.

In addition, proposed Rule 1203(e) would stipulate that OCC may institute disciplinary proceedings against a Clearing Member pursuant to Chapter XII of the Rules for a violation of any of the requirements listed above.

The proposed rule change also would replace the existing fine schedule with a simplified fine schedule in new Rule 1203(c) that imposes $1,500 for the first minor rule violation and $2,500 for a second violation occurring within a rolling 24-month period. Additionally, three or more violations within a rolling 24-month period would result in a disciplinary proceeding in accordance with Chapter XII of the Rules. Proposed paragraph (d) also would clarify that fines will be levied for offenses within a rolling 24-month period beginning with the first occasion.

[36] As noted above in the description of proposed Rule 204, Rule 101 has been revised to define the term ''Statutory Disqualification'' as (i) in the case of a fully registered broker-dealer, a statutory disqualification as defined in section 3 of the Exchange Act, (ii) in the case of a fully registered FCM, the applicant or Clearing Member or a principal thereof, as defined in CEA section 8a(2), is subject to statutory disqualification under CEA section 8a(2)–(4), or (iii) in the case of a Non-U.S. Securities Firm or bank, any similar provision of the laws or regulations applicable to such applicant or Clearing Member.

Proposed Rule 1204—Discipline by Other Self-Regulatory Organizations

Under the proposed rule change, existing Rule 1203 would be renumbered as Rule 1204 with no other substantive changes.

Proposed Rule 2201—Instructions to the Corporation

Portions of existing Article V, Section 1, Interpretation and Policy .07 currently set forth requirements applicable to Canadian Hedge Clearing Members on behalf of which CDS maintains an identifiable sub-account at DTC. The proposed rule change would move these provisions to new paragraphs (c) and (d) of Rule 2201 and eliminate references to ''Canadian Hedge Clearing Member'' given that term would no longer be defined. There are no other substantive changes to these provisions.

Additional Proposed Changes to Terms

The proposed rule change would move various defined terms from the By-Laws to Chapter I of the Rules, including Canadian Clearing Member, FATCA, FATCA Compliant, FFI Clearing Member, Non-U.S. Regulatory Agency, Non-U.S. Securities Firm, Qualified Intermediary Assuming Primary Withholding Responsibility, Qualified Derivatives Dealer. The defined terms Section 871(m) Effective Date and Section 871(m) Implementation Date would be removed because these dates have passed so the defined terms are no longer necessary.

The proposed rule change also would adopt a new definition for the term Statutory Disqualification.[37]

Finally, the proposed rule change would eliminate various distinct categories of Clearing Members and their respective definitions or other usage from the By-Laws, including, Canadian Hedge Clearing Member, Domestic Clearing Member, exempt Non-U.S. Clearing Member, futures-only affiliated Clearing Member, Hedge Clearing Member, Managed Clearing Member, Managing Clearing Member and Market Loan Clearing Member. References to these terms in the text of the By-Laws or the Rules would be replaced with general references to ''Clearing Member'' and all Clearing Members would be subject to the consistent standards set forth in the proposed rule change.

OCC would continue to maintain the concept of Appointing Clearing Members and Appointed Clearing Members; however, these members would no longer be subject to distinct or different membership standards.

Additional Proposed Deletions

Existing Rule 204

The proposed rule change would remove existing Rule 204, which pertains to designating physical locations as clearing offices of the Clearing Member. As a practical matter, this Rule is no longer relevant to the operations of OCC or its Clearing Members given the migration of trading, clearance and settlement activities to electronic means.

Existing Rule 309

The proposed rule change would remove existing Rule 309, which sets forth certain requirements for Managed Clearing Members and Managing Clearing Members. More generally, the proposed rule change would remove references to facilities management agreements, Managing Clearing Members and Managed Clearing Members. These rules would be replaced by the more general rules proposed for outsourcing to third-party service providers.[38]

Existing Rule 309A

The proposed rule change would remove existing Rule 309A, which sets forth minimum capital and other requirements for Appointed Clearing Members. The concept of Appointing and Appointed Clearing Members would remain in OCC's rules, but they would no longer be a distinct ''membership type.'' Any Clearing Member serving an Appointed Clearing Member capacity would be subject to the same minimum capital requirements as all other Clearing Members (as set forth in proposed Rule 301).[39] OCC would also revise the definition of Appointed Clearing Member to clarify that an Appointed Clearing Member must be authorized to clear physically-settled equity options and stock futures to ensure they have the appropriate operational capability and expertise to settle such transactions on behalf of other Clearing Members.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with section 17A of the Act[40] and the rules thereunder applicable to OCC. Section 17A(b)(3)(B) of Act[41] provides that the rules of a clearing agency may permit, among other things, a registered broker-dealer, bank or other person or class of persons as is appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions to become a participant in such clearing agency. As described in greater detail above, the proposed rule change expands the list of types of entities eligible for clearing membership in proposed Rule 201 to include eligible banks. As described herein, the proposed rule change sets forth robust financial and operational membership standards applicable to eligible banks that are consistent with the financial and operational membership standards applicable to existing types of institutions that are eligible for clearing membership. As such, OCC believes that eligible banks that meet the membership standards do not pose additional risks relative to existing types of institutions that are eligible for clearing membership and may appropriately participate in the prompt and accurate clearance of securities transactions at OCC consistent with section 17A(b)(3)(B) of Act.[42] Moreover, OCC believes that the prudent expansion of types of institutions that are eligible for clearing membership will broaden the clearing membership base and potentially mitigate counterparty concentration risk consistent with the risk-based approach prescribed in Rule 17Ad–22(e)(18)[43] as described below.

Section 17A(b)(4)(B) of Act[44] permits a clearing agency to deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. In addition, section 17A(b)(4)(B) of Act[45] permits a registered clearing agency to examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency. As described in greater detail herein, the proposed rule change consolidates and modifies the admission procedures and conditions to admission addressed in proposed Rules 203 and 204 to better assist OCC in reviewing, examining, verifying and ultimately approving or disapproving applications for clearing membership. Under the proposed rule change, OCC retains its authority to deny or otherwise condition the participation of any person that does not meet the

[37] *See supra* discussion on proposed Rule 204.

[38] *See supra* discussion on proposed Rule 303.

[39] *See supra* discussion on proposed Rule 301.

[40] 15 U.S.C. 78q–1.

[41] 15 U.S.C. 78q–1(b)(3)(B).

[42] *Id.*

[43] 17 CFR 240.17Ad–22(e)(18).

[44] 15 U.S.C. 78q–1(b)(4)(B).

[45] *Id.*

applicable membership standards. As such, OCC believes that the proposed rule change promotes the purposes of section 17A(b)(4)(B) of Act.[46]

Section 17A(b)(3)(F) of Act[47] requires, among other things, that the rules of a clearing agency are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency. As appropriate, the proposed rule change seeks to consolidate and modify the admission procedures and conditions to admission addressed in proposed Rules 203 and 204. Where appropriate, the proposed rule change adopts uniform standards in Chapters II and III of the Rules that apply to each type of institution that is eligible for clearing membership. This consolidation and uniformity is intended to (among other things) help OCC to continue to promote fair and open access and non-discrimination among Clearing Members and applicants for clearing membership. Likewise, under proposed Rule 201, the proposed rule change seeks to maximize the types of products and other activities that each type of Clearing Member may potentially be eligible. As such, OCC believes that the proposed rule change promotes the purposes of section 17A(b)(3)(F) of Act.[48]

Rule 17Ad–22(b)(7)[49] provides that a clearing agency is required to ''[p]rovide a person that maintains net capital equal to or greater than $50 million with the ability to obtain membership at the clearing agency, provided that such persons are able to comply with other reasonable membership standards, with any net capital requirements being scalable so that they are proportional to the risks posed by the participant's activities to the clearing agency; provided, however, that the clearing agency may provide for a higher net capital requirement as a condition for membership at the clearing agency if the clearing agency demonstrates to the Commission that such a requirement is necessary to mitigate risks that could not otherwise be effectively managed by other measures and the Commission approves the higher net capital requirement as part of a rule filing or clearing agency registration application.'' As described in greater detail herein, the proposed rule change sets forth in proposed Rule 201 a capital floor of at least $500 million in Tier 1 Capital for eligible banks and at least $10 million for all other types of institutions eligible for clearing membership. With respect to eligible banks, this higher capital floor is intended to account for the larger capital base normally maintained by eligible banks as compared to other types of eligible institutions. Given the nature of the capital base normally maintained by eligible banks, OCC believes that the capital floor of at least $500 million in Tier 1 Capital for eligible banks is necessary to mitigate risks that could not otherwise be effectively managed by other measures in accordance with Rule 17Ad–22(b)(7).[50] In addition, the capital floor of at least $10 million for all other types of institutions eligible for clearing membership is consistent with Rule 17Ad–22(b)(7).[51]

Rule 17Ad–22(e)(18)[52] requires a clearing agency, among other things, to ''[e]stablish objective, risk-based, and publicly disclosed criteria for participation'' that ''permit fair and open access'' and ''require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency.'' The purpose of the proposed rule change is to improve upon OCC's existing financial and operational membership standards to continue to permit fair and open access and to further mitigate counterparty credit risk introduced by Clearing Members. With respect to financial resources, the proposed rule change increases the minimum capital requirements for existing types of Clearing Members and introduces minimum capital requirements for each of the new types of Clearing Members in proposed Rule 301. The proposed rule change also enhances and otherwise clarifies OCC's early warning notice and periodic reporting requirements for Clearing Members under proposed Rules 306, 306A and 306B. Likewise, the proposed rule change adopts additional protective measures, including enhancing restrictions on capital distributions by Clearing Members, under proposed Rules 307, 307A, 307B and 307C. With respect to operational capacity, the proposed rule change adopts or otherwise modifies the provisions set forth in proposed Rules 302, 303 and 304 to enhance OCC's operational capability, experience, and competence standards and related resources for Clearing Members, including, among other things, requirements relating to facilities, personnel and third-party arrangements. Importantly, the proposed rule change subjects Clearing Members to each of these financial and operational membership standards in a non-discriminatory manner under the Rules. As such, OCC believes that these enhanced financial and operational membership standards promote the requirements of Rule 17Ad–22(e)(18).[53]

Rule 17Ad–22(e)(18)[54] also requires a clearing agency to monitor for compliance with its participation requirements on an ongoing basis. The proposed rule change amends the notification and reporting requirements in proposed Rules 306, 306A and 306B to enhance the event-based reporting and periodic reporting obligations imposed on Clearing Members. OCC believes that these changes will better assist OCC in monitoring for compliance with its clearing membership requirements consistent with Rule 17Ad–22(e)(18).[55]

Rule 17Ad–22(e)(21)[56] requires a clearing agency, among other things, to be efficient and effective in meeting the requirements of its participants and the markets it serves. In furtherance of this requirement, the proposed rule change sets forth several changes intended to increase efficiency and effectiveness, including but not limited to the following: (i) the allowance of electronic, optical or similar signatures under proposed Rule 205; (ii) enhancements with respect to requirements applicable to submissions to and retrieval of items under proposed Rule 207; and (iii) the removal of authorization stamp references in proposed Rule 209. OCC believes that these changes are consistent with Rule 17Ad–22(e)(21).[57]

Rule 17Ad–22(e)(4)[58] requires, among other things, a clearing agency to manage its credit exposures to participants. The proposed rule change adopts new Rule 212 to address circumstances in which a Clearing Member voluntarily terminates its membership. Among other things, proposed Rule 212 sets forth procedures for the closing out or transfer of all open positions and the treatment of the Clearing Member's Clearing Fund contribution during the withdrawal period. OCC believes that proposed Rule 212 is consistent with its requirement to manage its credit exposures to

[46] *Id.*

[47] 15 U.S.C. 78q–1(b)(3)(F).

[48] *Id.*

[49] 17 CFR 240.17Ad–22(b)(7).

[50] *Id.*

[51] *Id.*

[52] 17 CFR 240.17Ad–22(e)(18).

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] 17 CFR 240.17Ad–22(e)(21).

[57] *Id.*

[58] 17 CFR 240.17Ad–22(e)(4).

participants under Rule 17Ad–22(e)(4).[59]

Rule 19d–1(c)(2)[60] permits a self-regulatory organization to adopt a plan for minor rule violations that, among other things, result in fines not exceeding $2,500. The proposed rule change amends OCC's minor rule violation plan in proposed Rule 1203. Among other things, the amended plan includes fines not to exceed $2,500 for violations of specified rules that may be deemed minor rule violations under the Rules. OCC believes that these proposed changes are consistent with Rule 19d–1(c)(2),[61] including the designation of Rule 1203 as a ''plan.''

Rule 17Ad–22(e)(1)[62] requires, among other things, a clearing agency to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities. As described in greater detail herein, the proposed rule change makes certain organizational and other clarifying changes to the By-Laws and the Rules in order to prevent unnecessary regulatory burdens, to provide greater clarity and transparency, and to promote efficient administration of the By-Laws and the Rules. OCC believes that these proposed rule changes promote the purposes of Rule 17Ad–22(e)(1).[63]

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I)[64] of the Act requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would impact or impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is generally intended to improve upon OCC's existing financial and operational membership standards. The proposed rule change imposes these enhanced standards uniformly on all Clearing Members within a particular category of institution, and whenever possible, uniformly across all Clearing Members irrespective of category. Furthermore, any differences in the standards applicable to different categories of institutions are a result of OCC's risk-based, objective criteria in accordance with the requirements set forth in Rule 17Ad–22(e)(18)[65] under the Act, and therefore are necessary and appropriate in furtherance of the purposes of the Act.

The proposed increase in minimum capital requirements for broker-dealers, FCMs, Canadian Investment Dealers, and other Non-U.S. Securities Firms may present a burden on competition among certain Clearing Members. OCC believes the proposed increase in minimum capital requirements would impact fewer than ten current Clearing Members; however, several of those impacted Clearing Members at times did maintain sufficient capital to meet the proposed requirements. OCC believes the higher regulatory capital requirements are necessary and appropriate in furtherance of the purposes of the Act. OCC believes that more thinly capitalized members present greater risks to OCC that may impact OCC's ability to comply with the requirements of the Act applicable to clearing agencies. For example, less capitalized Clearing Members may be unable to meet potential Clearing Fund replenishment/assessment obligations or Operational Loss Fee assessments. This could present increased credit and liquidity risk to OCC in times of extreme stress and place additional burdens on other Clearing Members that may need to compensate for the absence of such resources. OCC believes the proposed rule change would continue to provide for objective and risk-based standards that balance fair and open access with prudent qualification standards while ensuring its membership base is appropriately capitalized to support the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by OCC, the safeguarding of securities and funds in the custody or control of OCC or for which it is responsible, and the protection of investors and the public interest in accordance with section 17A(b)(3)(F) of the Act.[66]

For the foregoing reasons, OCC believes that the proposed rule change is in the public interest, would be consistent with the requirements of the Act applicable to clearing agencies, and would not impact or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On February 27, 2023 and March 3, 2023, OCC received an unsolicited draft comment letter and additional comments from Broadridge Business Process Outsourcing LLC (''Broadridge'') on an initial version of the proposal. The draft letter expressed full support for OCC's proposal and suggested certain clarifying word choice changes in connection with the initially proposed text for Rules 303(a), (b) and (c). OCC has addressed these written comments from Broadridge by incorporating them as part of the text of these proposed provisions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve or disapprove such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2023–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2023–002. This file number should be included on the subject line if email is used. To help the

[59] *Id.*
[60] 17 CFR 240.19d–1(c)(2).
[61] *Id.*
[62] 17 CFR 240.17Ad–22(e)(1).
[63] *Id.*
[64] 15 U.S.C. 78q–1(b)(3)(I).
[65] 17 CFR 240.17Ad–22(e)(18).
[66] 15 U.S.C. 78q–1(b)(3)(F).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules*.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2023–002 and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05689 Filed 3–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97146; File No. SR–CboeBZX–2023–015]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Sponsored Participant Rules 11.3(a) and 11.3(b)(2)

March 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Exchange Rule 11.3(a)–(b) to: (1) define the term ''Sponsored Access''; (2) provide that the Sponsored Participant rules of the Exchange apply only to the trading of equities; and (3) to codify that the agreement required by and between the Sponsoring Member and Sponsored Participant must include a provision that any Sponsored Access relationship must follow the requirements of SEC Rule 15c3–5, the Market Access Rule (''MAR'').[5] The text of the proposed rule change is provided below and in Exhibit 5.[6]

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Exchange Rule 11.3(a)–(b) to: (1) define the term ''Sponsored Access''; (2) provide that the Sponsored Participant rules of the Exchange apply only to the trading of equities; and (3) to codify that the agreement required by and between the Sponsoring Member and Sponsored Participant must include a provision that any Sponsored Access relationship must follow the requirements of the MAR.

Sponsored Access Definition

Per current Exchange rules a ''Sponsored Participant''[7] may be a Member[8] or non-Member of the Exchange whose direct electronic access to the Exchange is authorized by a Sponsoring Member[9] pursuant to the requirements set forth in Exchange Rule 11.3(b)(1)–(3), ''Sponsored Participants''. The Exchange proposes to amend Rule 11.3(a) to include the following definition, ''Sponsored Access shall mean an arrangement whereby a Member permits its Sponsored Participants to enter orders into the Exchange's System that bypass the Member's trading system and are routed directly to the Exchange, including through a service bureau or other third-party technology provider.'' The Exchange notes that the proposed definition of Sponsored Access

[67] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.15c3–5—Risk management controls for brokers or dealers with market access.

[6] The Exchange proposes to implement the proposed changes to Rule 11.3(a)–(b)(1)–(3) on a date that will be announced via Cboe Trade Desk, notifying both existing and prospective Sponsoring Members and Sponsored Participants, of the new rule language and required contractual provisions.

[7] The term ''Sponsored Participant'' shall mean a person which has entered into a sponsorship arrangement with a Sponsoring Member pursuant to Rule 11.3. *See* Exchange Rule 1.5(x), definition of ''Sponsored Participant''.

[8] The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. *See* Exchange Rule 1.5(n), definition of ''Member''.

[9] The term ''Sponsoring Member'' shall mean a broker-dealer that has been issued a membership by the Exchange who has been designated by a Sponsored Participant to execute, clear and settle transactions from the System. The Sponsoring Member shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. *See* Exchange Rule 1.5(y), definition of ''Sponsoring Member''.

definition is identical to that adopted [10] by the Nasdaq Stock Market, LLC (''Nasdaq''), General 2 in Section 22, Sponsored Participants, of their General Equity and Options Rules.[11] The Exchange believes defining Sponsored Access will provide Sponsoring Members with greater clarity in understanding which types of market access relationships are subject to Exchange Rule 11.3(a)–(b),[12] and what obligations Sponsoring Members and Sponsored Participants must satisfy when establishing a Sponsored Access relationship.

Sponsored Access—Equities Market Only

Additionally, the Exchange seeks to amend Rule 11.3(a) to provide that the application of the Exchange's Sponsored Participant rule applies only to Sponsored Members of the Exchange's equities market and does not apply to Options Members [13] of the Exchange's options market. The Exchange does not currently have any Options Members registered to act as Sponsoring Members for any Sponsored Participants who would electronically trade options and, to date, has not received such a request for an options-based Sponsoring Member-Sponsored Participant relationship. Accordingly, the Exchange believes it appropriate to provide that the Sponsored Access program will apply only to Sponsoring Members providing Sponsored Participants direct electronic access to the Exchange's equities market (not the Exchange's options market) and does not believe that making such change will result in unfair discrimination between equity Members and Options Members.

Market Access Rule

The Exchange seeks to codify that the agreement currently required under Exchange Rule 11.3(b)(2), by and between the Sponsoring Member and Sponsored Participant, must include a provision that any Sponsored Access relationship must follow the requirements of the MAR. While Sponsoring Members have existing obligations under the MAR because they are providing market access to their Sponsored Participants, the Exchange believes the proposed amendment will help to reinforce such obligations. Sponsored Participants will now be required to contractually agree with their Sponsoring Members to follow the requirements of the MAR.

The Exchange believes that the proposed addition of 11.3(b)(2)(J) will reinforce to Sponsoring Members that Sponsored Access relationships must comply with the SEC's MAR, as well as Exchange rules regarding the provision of market access. As noted above, such relationships generally include where a broker-dealer allows its customer to use the broker-dealer's market participant identifier (''MPID'') or other mechanism or mnemonic to enter orders into the Exchange's System that bypass the Sponsoring Member's order handling system and are electronically routed directly to the Exchange by the Sponsored Participant, including through a service bureau or other third-party technology provider.

The Exchange notes further that the proposed addition of 11.3(b)(2)(J) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market access. Indeed, per the Exchange's current Sponsored Participant rules the Sponsoring Member is already responsible for all its Sponsored Participant's activity on the Exchange [14] and is required to comply with the Exchange's Certificate of Incorporation, By-Laws, Rules, and procedures.[15] This includes compliance with Rule 2.2, which requires, among other things, compliance with the Act and the regulations thereunder, including the MAR.

The proposed addition of Rule 11.3(b)(2)(J) is potentially substantive in nature to Sponsored Participants in that the proposed amendment adds a requirement to the agreement by and between the Sponsoring Member and Sponsored Participant, requiring the Sponsored Participant to contractually agree to follow the requirements of the MAR. Importantly, as part of their obligation to comply with Exchange Rules and procedures, existing Sponsoring Members will be expected to amend any existing contractual arrangements with their Sponsored Participants to include the new contractual provision proposed by the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirement that

[10] *See* Securities and Exchange Act Release No. 34–76449) (November 27, 2015) 80 FR 73011 (November 23, 2015) (SR–NASDAQ–2015–140) (Notice of Filing and Immediate Effectiveness of the Proposed Rule Change Relating to Sponsored Access) (''Sponsored Access shall mean an arrangement whereby a member permits its customers to enter orders into the Exchange's System that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third party technology provider.'')

[11] *See* General Equity and Options Rule, General 2: General Provisions, Section 22(a), available at: *https://listingcenter.nasdaq.com/rulebook/Nasdaq/rules*.

[12] Consistent with the proposed definition, such relationships generally include where a broker-dealer allows its customer—such as a hedge fund, mutual fund, bank or insurance company, an Exchange registered market maker, an individual, or another broker-dealer—to use the broker-dealer's market participant identifier (''MPID'') or other mechanism or mnemonic to enter orders into the Exchange's System that bypass the Sponsoring Member's order handling system and are electronically routed directly to the Exchange by the Sponsored Participant, including through a service bureau or other third-party technology provider. For the avoidance of doubt, in a scenario where a Sponsored Participant is also an Exchange Member (*e.g.,* where a Sponsored Member provides market access to an Exchange Member Market Maker), (i) the Sponsored Participant will be subject to all Exchange rules and regulations applicable to *Members* acting in their own capacity, whether the Sponsored Participant accesses the Exchange via their own Membership or via a Sponsored Access arrangement; and (ii) the Sponsoring Member will be responsible for the Sponsored Participant activity just as it would for any other non-Member Sponsored Participant under Rule 11.3(b), including compliance with the MAR requirements and for compliance with the applicable Member-related activity electronically routed to the Exchange via the Sponsored Access arrangement (*e.g.,* the Sponsoring Member would be required to hold appointments and would be subject to applicable requirements as an Exchange Market Maker in the products for which the Sponsored Participant Market Maker is registered and routes orders/quotes via the Sponsored Access arrangement).

[13] The term ''Options Members'' means a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of these Rules for purposes of participating in options trading on BZX Options as an ''Options Order Entry Firm'' or ''Options Market-Maker''. *See* Rule 16.1, definition of ''Options Member''.

[14] *See* Rule 11.3(b)(2)(B)(1)–(2).

[15] *See* Rule 11.3(b)(2)(C).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Defining Sponsored Access

As noted above, the Exchange believes that defining Sponsored Access will provide Sponsoring Members with greater clarity as to which types of market access relationships [19] are subject to Exchange Rule 11.3(a)–(b)(1)–(3), and what obligations Sponsoring Members and Sponsored Participants must satisfy when establishing a Sponsored Access relationship. As such, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and serves to promote just and equitable principles of trade.

The proposed change will also help to reduce confusion by codifying a definition for such activity on the Exchange that is consistent with other industry practices currently in place elsewhere. The Exchange further notes that the proposed Sponsored Access definition is reasonable and does not affect investor protection because the proposed change does not present any novel or unique issues, as the proposed Sponsored Access definition has previously been adopted by Nasdaq.[20]

Sponsored Access—Equities Market Only

Furthermore, the Exchange believes that limiting Exchange Rule 11.3(a)–(b)(1)–(3) to Sponsoring Members providing direct electronic access to Sponsored Participants of the Exchange's equities market will contribute to the protection of investors and the public interest by simplifying the Exchange's rules and making them easier for Members and Options Members to understand, thus bolstering their collective understanding of the Exchange's rules. Moreover, as noted above, the Exchange currently has no Options Members registered as Sponsoring Members and has yet to receive a request from Options Members to establish a Sponsored Access relationship. Accordingly, the Exchange does not believe that this proposed rule change will significantly alter Options Members' relationship with the Exchange or impose upon them any new obligations, and no longer wishes to have its Sponsored Access program apply to its options market.

Market Access Rule

As noted above, the proposed addition of 11.3(b)(2)(J) will reinforce to Sponsoring Members that Sponsored Access relationships must comply with the SEC's MAR, as well as Exchange Rules regarding the provision of market access. Also, by adding proposed paragraph 11.3(b)(2)(J), Sponsored Participants are now required to contractually agree that their Sponsored Access to the Exchange must follow the requirements of the MAR.

In this regard, the proposed amendment will help to ensure that by and between the Sponsoring Member and Sponsored Participant that all orders entered onto the Exchange pursuant to a Sponsored Access relationship will follow the requirements of the MAR. As discussed, the Exchange believes the proposed addition of 11.3(b)(2)(J) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market access. The proposed addition of Rule 11.3(b)(2)(J) is potentially substantive in nature to Sponsored Participants in that the proposed amendment adds a new requirement to the relationship by and between the Sponsoring Member and Sponsored Participant, requiring the Sponsored Participant to contractually agree to follow the requirements of the MAR.

Accordingly, the proposed rule change will help to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

For the reasons noted below, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Defining Sponsored Access

The proposed Sponsored Access definition does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed definition merely seeks to make clear to Sponsoring Members that Sponsored Access is a relationship subject to Exchange Rule 11.3(a)–(b)(1)–(3). Moreover, Sponsored Access is a voluntary arrangement that a Sponsoring Member voluntarily elects to enter with its Sponsoring Participant. A Member is not required to become a Sponsoring Member, and in fact, may decline to enter such a relationship with its customers.

Sponsored Access—Equities Market Only

Moreover, providing that Exchange Rule 11.3(a)–(b)(1)–(3) will only apply to Sponsoring Members providing direct electronic access to Sponsored Participants to the Exchange's equities market does not unduly burden Options Members because as noted above, the Exchange is historically yet to receive any Sponsored Access registrations from Options Members, and there are currently no Options Members registered as Sponsoring Members.

Market Access Rule

Additionally, the Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Notably, other exchanges have in place similar rules and documentation requirements applicable to sponsored participants and their sponsoring members.[21] Moreover, the proposed Sponsored Access definition is identical to that adopted by Nasdaq [22] and currently codified in their rulebook.[23]

The proposed rule change to explicitly cite the MAR in Rule 11.3(b)(2)(J) does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, this change is non-substantive as Sponsoring Members are currently responsible for complying with the MAR with respect to their provision of Sponsored Access to Sponsored Participants. While the proposed addition of Rule 11.3(b)(2)(J) is potentially substantive in nature to Sponsored Participants because it requires a Sponsored Participant to contractually agree with its Sponsoring Member to follow the requirements of the MAR, the Exchange notes the proposed contractual requirement also exists in the Nasdaq rulebook [24] and as such, should not raise any new or novel issues for consideration by Sponsored Participants.

[19] *Supra* note 12.

[20] *Supra* note 10.

[21] *Supra* note 11.

[22] *Supra* note 10.

[23] *Supra* note 11.

[24] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) [26] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [27] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[28] the Commission may designate a shorter time of such action is consistent with the protection of investor and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that the proposed rule change could immediately benefit market participants by clarifying for Sponsoring Members which relationships are subject to the Exchange's Sponsored Access rules and promoting just and equitable principles of trade. The Exchange also states that the proposed rule change could immediately bolster Sponsoring Members and Options Members collective understanding of the Exchange's Sponsored Participant rules, thereby contributing to the protection of investors and public interest. The Exchange also states the proposed addition of 11.3(b)(2)(J) is non-substantive in nature for Sponsoring Members because as broker-dealers providing market access, Sponsoring Members are already required to comply with the MAR, as well as with existing Exchange Rules regarding market access. Because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2023–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2023–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2023–015 and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

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[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 17 CFR 200.30–3(a)(12), (a)(59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97148; File No. SR–MRX–2023–07]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3 To Introduce a Growth Incentive

March 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2023, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Options 7, Section 3 (Regular Order Fees and Rebates).[3]

Today, as set forth in Table 1 of Options 7, Section 3, the Exchange assesses the following fees for regular orders in Penny Symbols:

PENNY SYMBOLS

Market participant	Maker fee Tier 1	Maker fee Tier 2	Taker fee Tier 1	Taker fee Tier 2
Market Maker	$0.20	$0.10	$0.50	$0.50
Non-Nasdaq MRX Market Maker (FarMM)	0.47	0.47	0.50	0.50
Firm Proprietary/Broker-Dealer	0.47	0.47	0.50	0.50
Professional Customer	0.47	0.47	0.50	0.50
Priority Customer	0.00	0.00	0.00	0.00

The Exchange now proposes to introduce a growth incentive in new note 6 that would allow Market Makers[4] to reduce their maker fees described above. The proposed growth incentive will be aimed at rewarding new and existing Market Makers to grow the extent of their liquidity adding activity in Penny Symbols on the Exchange over time. Market Makers, including any new Market Makers, who did not have any volume in the Market Maker Penny add liquidity segment for the month of December 2022 (and therefore lack December 2022 baseline volume against which to measure subsequent growth) would meet the growth requirement through whatever volume of Market Maker add liquidity activity in Penny Symbols during the first month of use.[5]

Specifically, Market Makers may qualify for a reduction in the Tier 1 and Tier 2 Maker Fees described above if the Market Maker has increased its volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume[6] by at least 100% over the Member's December 2022 Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. Market Makers that qualify will have their Tier 1 Maker Fee reduced to $0.08 and their Tier 2 Maker Fee reduced to $0.04. In doing so, the Exchange is proposing to reduce the Tier 1 and Tier 2 Maker Fees by 60% for qualifying Market Makers.

As noted above, Market Makers, including any new Market Makers, who did not have any volume in the Market Maker Penny add liquidity segment for the month of December 2022 would meet the growth requirement through whatever volume of Market Maker add liquidity activity in Penny Symbols during the first month of use. The Exchange therefore proposes to also add that Market Makers with no volume in the Penny Symbol add liquidity segment for the month of December 2022 may qualify for the reduced Tier 1 and Tier 2 Maker Fees described above by having any new volume considered as added volume. As such, new Market Makers that qualify for the Tier 1 or Tier 2 Maker Fee in a given month will have any new volume in the targeted segment qualify them for the proposed reduced fees. The Exchange also proposes to offer this incentive from January 3, 2023 until June 30, 2023 in order to encourage new Market Makers to join MRX, and will use this time period to evaluate the appropriate parameters going forward for market participants with no December 2022 volume in the targeted segment.

As noted above, the Exchange intends for this proposal to reward Market Makers that increase the extent to which they add Penny Symbol liquidity to the Exchange over time and specifically, relative to a recent benchmark month (December 2022). The Exchange believes that if the proposed incentive is effective, any ensuing increase in added liquidity in Penny Symbols will improve market quality, to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of

[3] The Exchange initially filed the proposed pricing changes on January 3, 2023 (SR–MRX–2023–01) to adopt a Market Maker growth incentive and to amend complex order fees. On January 17, 2023, the Exchange withdrew that filing and submitted SR–MRX–2023–02. On January 30, 2023, the Exchange withdrew that filing and submitted separate filings for the Market Maker growth incentive and complex order fees. SR–MRX–2023–04 replaced the Market Maker growth incentive set forth in SR–MRX–2023–02. On March 1, 2023, the Exchange withdrew SR–MRX–2023–04 and submitted this filing.

[4] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[5] As discussed below, the Exchange will sunset this incentive for new Market Makers on June 30, 2023 and will use this time period to evaluate the proposed growth tier criteria to determine whether the parameters are appropriately designed to incentivize Market Makers in the intended manner. The Exchange intends to come in with a future rule filing to adjust the growth tier parameters for new Market Makers.

[6] ''Customer Total Consolidated Volume'' means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. *See* Options 7, Section 1(c).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [9]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

The Exchange believes that it is reasonable to establish a new growth incentive that would provide Market Makers with the opportunity to reduce their maker fees to $0.08 (Tier 1) and to $0.04 (Tier 2) if they increase their Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume by at least 100% over their December 2022 Market Maker volume which adds liquidity in Penny Symbols as a percentage of Customer Total Consolidated Volume. The proposal is reasonable because it will provide extra incentives to Market Makers to engage in substantial amounts of liquidity adding activity in Penny Symbols on the Exchange, as well as to grow substantially the extent to which they do so relative to a recent benchmark month. The Exchange believes that if the proposed incentive is effective, then any ensuing increase in liquidity adding activity on the Exchange will improve the quality of the market overall, to the benefit of all market participants. The Exchange also believes that the proposed reduced fees are reasonable because the Exchange is proposing to reduce the Tier 1 and Tier 2 maker fees by the same percentage amount (*i.e.,* 60%) such that the reduced fees are commensurate with the base Tier 1 and Tier 2 maker fees that qualifying Market Makers receive for adding Penny Symbol liquidity. The Exchange similarly believes that it is reasonable to consider any new Penny add liquidity volume for Market Makers with no such volume for the month of December 2022 in order for those Market Makers to receive the proposed discounts to their maker fees because this is designed to attract additional Penny liquidity from new Market Makers to the Exchange during a temporary period between January 3, 2023 and June 30, 2023. To the extent this proposal attracts new Market Maker Penny add liquidity volume to the Exchange, all market participants should benefit through more trading opportunities and tighter spreads. As discussed above, the Exchange intends for this incentive aimed at attracting new Market Makers to sunset after June 30, 2023 and will use this time to evaluate suitable growth tier parameters for such market participants with no December 2022 volume in the targeted segment, after which it will come in with a rule filing to adjust the growth incentive as appropriate.

The Exchange believes that the proposed growth incentive is equitable and not unfairly discriminatory for the reasons that follow. As a general matter, the Exchange believes that it is equitable and not unfairly discriminatory to provide the proposed growth incentive to only Market Makers because Market Makers have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements). As such, the Exchange's proposal is designed to increase Market Maker participation and reward Market Makers for the unique role they play in ensuring a robust market. As discussed above, the proposal is designed to encourage Market Makers to substantially add Penny Symbol liquidity to the Exchange. To the extent the Exchange succeeds in increasing the levels of liquidity and activity on the Exchange, the Exchange will experience improvements in market quality, which stands to benefit all market participants.

The Exchange believes that the proposed growth incentive is equitable and not unfairly because as discussed above, the Exchange is proposing to reduce the Tier 1 and Tier 2 maker fees by the same percentage amount (*i.e.,* 60%) such that the reduced fees are commensurate with the base Tier 1 and Tier 2 maker fees that qualifying Market Makers receive for adding Penny Symbol liquidity. Furthermore, the Exchange believes that it is equitable and not unfairly discriminatory to consider any new Penny add liquidity volume for Market Makers with no such volume for the month of December 2022 in order for those Market Makers to receive the proposed discounts to their maker fees because this is designed to attract additional Penny liquidity from new Market Makers to the Exchange. In turn, this additional Penny liquidity should benefit all market participants through increased liquidity and order interaction. Furthermore, the proposed structure for new Market Makers with no December 2022 volume in the targeted segment will be temporary and sunset on June 30, 2023, after which the Exchange will come in with another rule filing to adjust the parameters for such market participants, as appropriate. To the extent the proposed maker fee attracts new Market Makers to the Exchange during this time period, the Exchange believes that its proposal will increase liquidity on MRX, which

[9] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

benefits all market participants by providing more trading opportunities, tighter spreads, and increased order interaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposals will place any category of market participant at a competitive disadvantage. The Exchange believes that the proposed Market Maker growth incentive should encourage the provision of liquidity from both existing and new Market Makers that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all market participants who will be able to compete for such opportunities.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

As discussed above, the proposed growth incentive is pro-competitive in that the Exchange intends for the changes to increase liquidity addition and activity on the Exchange, thereby rendering the Exchange a more attractive and vibrant venue to market participants.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2023–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2023–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2023–07 and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05687 Filed 3–20–23; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97145; File No. SR–NYSEARCA–2023–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend Rule 7.44–E Relating to the Retail Liquidity Program

March 15, 2023.

On January 10, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Retail Liquidity Program (the ''Program'').[3] The proposed rule

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Program was established on a pilot basis in 2013 and was approved by the Commission to operate on a permanent basis in 2019. *See* Securities Exchange Act Release No. 87350 (October 18, 2019), 84 FR 57106 (October 24, 2019) (SR–NYSEArca–2019–63). In connection with the Commission's approval of the Program on a pilot basis, the Commission granted the Exchange's request for exemptive relief from Rule 612 of Regulation NMS, 17 CFR 242.612, which, among other things, prohibits a national securities

Continued

change was published for comment in the **Federal Register** on January 30, 2023.[4] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 16, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[6] designates April 28, 2023 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEARCA–2023–06).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Sherry R. Haywood,

Assistant Secretary.

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exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01. *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107).

[4] *See* Securities Exchange Act Release No. 96741 (Jan. 24, 2023), 88 FR 5948.

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97147; File No. SR–NYSEARCA–2023–24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.40P–O Pertaining to Pre-Trade Risk Controls

March 15, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 9, 2023, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.40P–O (Pre-Trade and Activity-Based Risk Controls) pertaining to pre-trade risk controls to make additional pre-trade risk controls available to Entering Firms. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.40P–O (Pre-Trade and Activity-Based Risk Controls) pertaining to pre-trade risk controls to make additional pre-trade risk controls available to entering Firms.[4] The Exchange originally filed on November 17, 2022 to make this change immediately effective and that filing was published for comment on December 5, 2022 (the ''original filing'').[5] In light of a comment letter dated January 5, 2023,[6] the Exchange withdrew the original filing and now submits this revised filing to address several of the points raised in the comment letter.

Background and Purpose

In 2022, in connection with the Exchange's migration to Pillar and to better assist OTP Holders and OTP Firms in managing their risk, the Exchange adopted Rule 6.40P–O, which included pre-trade risk controls, among other activity-based controls, wherein an Entering Firm had the option of establishing limits or restrictions on certain of its trading behavior on the Exchange and authorizing the Exchange to take action if those limits or restrictions were exceeded.[7] Specifically, the Exchange added a Single Order Maximum Notional Value Risk Limit, and a Single Order Maximum Quantity Risk Limit[8] (collectively, the ''Initial Pre-Trade Risk Controls'').

The Exchange now proposes to expand the list of the optional pre-trade risk controls available to Entering Firms by adding several additional pre-trade risk controls that would provide

[4] The term ''Entering Firm'' refers to an OTP Holder or OTP Firm (including those acting as Market Makers). *See* Rule 6.40P–O(a)(1).

[5] *See* Securities Exchange Act Release No. 96829 (February 7, 2023), 88 FR 8980 (February 10, 2023) (SR–NYSEArca–2022–82).

[6] *See* Letter to Vanessa Countryman, Secretary, Securities and Exchange Commission, from Gerard P. O'Connor, Vice President and General Counsel of Hyannis Port Research, Inc. (''HPR Letter'') dated January 19, 2023, available at *https://www.sec.gov/comments/sr-bx-2022-022/srbx2022022-20155250-323599.pdf*. HPR is a provider of (among other things) non-exchange based risk controls solutions.

[7] *See* Securities Exchange Act Release No. 94072 (January 26, 2022), 87 FR 5592 (February 1, 2022) (Notice of filing Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4) (SR–NYSEArca–2021–47).

[8] The terms ''Single Order Maximum Notional Value Risk Limit, and ''Single Order Maximum Quantity Risk Limit'' are defined in Rule 6.40P–O(a)(2).

Entering Firms with enhanced abilities to manage their risk with respect to orders on the Exchange. As detailed below, each of the proposed additional risk controls is modeled on risk settings that are already available on the Exchange's affiliate equities exchanges, including NYSE American LLC (''NYSE American''),[9] as well as on other equities exchanges, including Cboe,[10] Nasdaq,[11] MEMX,[12] and MIAX Pearl.[13]

Like the Initial Pre-Trade Risk Controls, use of the pre-trade risk controls proposed herein is optional, but all orders on the Exchange would pass through these risk checks. As such, an Entering Firm that does not choose to set limits pursuant to the new proposed pre-trade risk controls would not achieve any latency advantage with respect to its trading activity on the Exchange.

The HPR Letter questions why the Exchange proposes to make all orders on the Exchange pass through its risk checks, even if a particular firm trading on the Exchange opts not to employ the Exchange's pre-trade risk controls. The Exchange has chosen to implement its risk checks ''symmetrically'' to all orders because that is the functionality that clients have specifically requested, and it is also the recognized best practice in this area. In a September 2021 white paper entitled ''Market Lens: Exchange Best Practices for Reducing Operational Risk at Broker-Dealers,'' [14] Citadel Securities requested that exchanges assist firms in mitigating operational trading risk by instituting exchange-based risk controls, but expressly cautioned exchanges against segmenting orders into those that would pass through risk checks versus those that would not. Citadel noted that such segmentation of orders would ''produce incentives for all firms to avoid using any controls, for fear of suffering a competitive disadvantage.'' [15] Instead, Citadel recommended that exchanges ''ensure orders follow the same order processing logic regardless of which options or features are enabled,'' [16] in order to eliminate any competitive advantage or disadvantages for clients.

This is the model that the Exchange used in building the Initial Pre-Trade Risk Controls that the Commission approved in 2020,[17] and is the same model that the Exchange proposes would apply to the additional pre-trade risk checks proposed here. There is nothing unique about this approach. Functionality on the Exchange's trading systems is often applied uniformly to all orders and quotes, regardless of whether a particular client has opted to use that functionality for a particular order or quote. For example, the Exchange's limit order price protection applies generally to trading on the Exchange and orders or quotes with limit prices are not processed more slowly than those without. Similarly, the Exchange's trading systems check all orders and quotes for a variety of details and modifiers (*e.g.,* duplicative client order check, order capacity check, and self-trade prevention).

The Exchange understands that the risk checks of other exchanges, on which the proposed rule is modeled, also apply symmetrically to all orders.[18] The Exchange also notes that the Citadel white paper cited above was written ''in collaboration with several major exchanges, including NYSE, Nasdaq, MIAX, MEMX, and BOX,'' suggesting that some or all of those exchanges may also employ the symmetrical application of risk checks that the Citadel white paper recommends.[19]

The Exchange stated in its original filing for the current proposal that it expects that any latency added by the proposed additional pre-trade risk controls would be *de minimis.* Specifically, the Exchange expects that the latency added by the combination of the Initial Pre-Trade Risk Controls plus the proposed additional pre-trade risk controls would be significantly less than one microsecond. Nevertheless, seizing on the phrase ''*de minimis,*'' HPR argues that the Commission's 2016 interpretation regarding automated quotations under Regulation NMS [20] applies here and should require the Exchange to justify this *de minimis* latency change in a number of ways.[21] But that Commission interpretation pertains to ''intentional access delays,'' like speed bumps—not to the issues here. The Exchange's pre-trade risk controls are not an intentional access delay,[22] but a functional enhancement to the Exchange's trading systems, and, like any change to a trading system's

[9] *See, e.g.,* Securities Exchange Act Release Nos. 96922 (February 14, 2023), 88 FR 10580 (February 14, 2023) (SR–NYSE AMER–2023–12) (modifying NYSE American Rule 7.19E).

[10] *See* Securities Exchange Act Release Nos. 80611 (May 5, 2017), 82 FR 22045 (May 11, 2017) (SR–BatsBZX–2017–24) (adopting Rule 11.13, Interpretation and Policies .01); 80612 (May 5, 2017), 82 FR 22024 (May 11, 2017) (SR–BatsBYX–2017–07) (same); 80608 (May 5, 2017), 82 FR 22030 (May 11, 2017) (SR–BatsEDGA–2017–07) (adopting Rule 11.10, Interpretation and Policies .01); 80607 (May 5, 2017), 82 FR 22027 (May 11, 2017) (SR–BatsEDGX–2017–16) (same).

[11] *See, e.g.,* Securities Exchange Act Release Nos. 82479 (January 10, 2018), 83 FR 2471 (January 17, 2018) (SR–Nasdaq–2018–002) (adopting IM–6200–1); 90577 (December 7, 2020), 85 FR 80202 (December 11, 2020) (SR–Nasdaq–2020–79) (moving IM–6200–1 into Equity 6, Section 5). *See also* Securities Exchange Act Release Nos. 82545 (January 19, 2018), 83 FR 3834 (January 26, 2018) (SR–BX–2018–001) (adopting Rule 4765 and commentary thereto); 91830 (May 10, 2021), 86 FR 26567 (May 14, 2021) (SR–BX–2021–012) (moving Rule 4765 and commentary into Equity 6, Section 5).

[12] *See* Securities Exchange Act Release No. 89581 (August 17, 2020), 85 FR 51799 (August 21, 2020) (SR–MEMX–2020–04) (adopting Rule 11.10, Interpretation and Policies .01).

[13] *See* Securities Exchange Act Release Nos. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR–PEARL–2020–03) (adopting Rule 2618(a)(1)(A)–(D)); 96205 (November 1, 2022), 87 FR 67080 (November 7, 2022) (SR–PEARL–2022–43) (adopting subsections (E)–(H) to Rule 2618(a)(1)).

[14] *See* Citadel Securities, ''Market Lens: Exchange Best Practices for Reducing Operational Risk at Broker-Dealers'' (''Citadel white paper'') dated September 2021, available at *https://www.citadelsecurities.com/wp-content/uploads/sites/2/2021/09/Citadel_Securities_Market-Lens_Sept_2021_Exchange-Best-Practices-for-Reducing-Operational-Risk.pdf.* As Citadel put it (at page 5):

> Insufficiently well-designed and tested controls can create what amount to penalties, driven by the time and computational power required to perform various stages of checks, if applied only to participants who opt-in to their use. This could produce incentives for all firms to avoid using any controls, for fear of suffering a competitive disadvantage. One way to address this, while maintaining choice for member firms, is to ensure orders follow the same order processing logic regardless of which options or features are enabled—similar to how all colocated servers in an equalized data center incur the same cabling distance to the matching engine, regardless of their physical proximity to it. Additionally, exchanges should vigorously test controls to ensure no latency penalty exists in practice. Exchanges should actively publicize the net-neutral risk controls.

[15] *Id.* at 5.

[16] *Id.*

[17] *See* Securities Exchange Act Release No. 88776 (April 29, 2020), 85 FR 26768 (May 5, 2020) (SR–NYSE–2020–17) (order approving pre-trade risk controls on the Exchange's affiliate exchange, the New York Stock Exchange LLC). The Commission concluded that ''the proposed rule change is reasonably designed to provide members with optional tools to manage their credit risk.'' *Id.* at 26770.

[18] *See, e.g.,* MEMX Risk FAQ, dated October 13, 2020, available at *https://info.memxtrading.com/us-equities-faq/#Bookmark21* (''The risk checks are applied in a consistent manner to all participant orders in order to mitigate risk without incurring latency disadvantage.''); MIAX Pearl Equities Exchange User Manual, updated October 2022, available at *https://www.miaxequities.com/sites/default/files/website_file-files/MIAX_Pearl_Equities_User_Manual_October_2022.pdf,* at 29 (stating that all but two of the exchange's 14 risk checks ''are latency equalized *i.e.* there is no latency penalty for a member when opting into and leveraging a risk protection available on the exchange when entering an order as compared to a member not opting into the risk protection when entering an order'').

[19] *See* Citadel white paper, *supra* note 14, at 2.

[20] *See also* Securities Exchange Act Release No. 78102 (June 17, 2016), 81 FR 40785 (June 23, 2016) (File No. S7–03–16) (Commission Interpretation Regarding Automated Quotations Under Regulation NMS), available at *https://www.sec.gov/rules/interp/2016/34-78102.pdf.*

[21] HPR Letter, *supra* note 6 at 5–6.

[22] Indeed, the Commission did not treat any of the other exchanges' filings for pre-trade risk controls listed above in notes 9–13 as ''intentional access delays.''

function or performance, may impact the overall speed of trading on the Exchange in ways that can increase or decrease overall latency. It is within the Exchange's prerogative as a market center in the current hotly competitive environment to assess whether and when to make functional enhancements to its trading systems. What is key under the Exchange Act is that any anticipated latency effects of such enhancements are applied uniformly, to all orders of all market participants, in a non-discriminatory way—as the risk controls proposed here would be. If market participants find that the latency cost of such enhancements is not justified by the additional functionality they offer, such market participants will vote with their feet and send their order flow elsewhere.

With one exception, the additional risk checks proposed here would be a functional enhancement to the Exchange's Pillar gateway [23] and the risk checks would be applied to all orders and quotes on the Exchange. While the Exchange strongly believes that symmetrical application of all pre-trade risk controls is the appropriate approach (as explained above), providing customers an opt-out ability would require the Exchange to provide new order/quote entry ports that would bypass the evaluation of such pre-trade risk protections. Providing such new ports would burden customers with additional costs to purchase such ports and to migrate their order flow to such ports. The Exchange does not believe that the added expense of creating such new ports (on the part of the Exchange) or of purchasing and migrating to them (on the part of customers) is justified in light of the *de minimis* latency imposed by the pre-trade risk controls at issue.

Proposed Amendment to Rule 6.40P–O

To accomplish this rule change, the Exchange proposes to amend the definition of the term ''Pre-Trade Risk Controls'' set forth in Rule 6.40P–O(a)(2) to adopt the definition of ''Single-Order Risk Controls,'' which controls would be listed in proposed paragraph (A) to Rule 6.40P–O(a)(2). As proposed, the ''Single-Order Risk Controls'' would include the already-defined risk controls of the Single Order Maximum Notional Value Risk Limit and Single Order Maximum Quantity Risk Limit (collectively referred to herein as the ''existing Single-Order Risk Checks''), with non-substantive changes to streamline the descriptions of these controls into new paragraph (i) of proposed Rule 6.40P–O(a)(2)(A).[24] However, because of a lack of demand for the option to apply the existing Single-Order Risk Checks to Market Maker quotes, the Exchange proposes to discontinue functionality supporting this optional feature.

In the addition, the Exchange proposes to add paragraphs (a)(2)(A)(ii) through (v) to enumerate the proposed new Single-Order Risk Controls, as follows:

(ii) controls related to the price of an order or quote (including percentage-based and dollar-based controls);

(iii) controls related to the order types or modifiers that can be utilized;

(iv) controls to restrict the options class transacted; and

(v) controls to prohibit duplicative orders.

Each of the new Single-Order Risk Controls in proposed paragraph (a)(2)(A)(ii)–(v) is substantively identical to risk settings already in place on the Exchange's affiliate equities exchange, NYSE American as well as those on other equities exchanges, including Cboe, Nasdaq, MEMX, and MIAX Pearl,[25] except that the proposed controls account for options trading, such as including reference to ''an order or quote'' versus ''an order'' and reference to restrictions on trading in an ''options class'' versus on ''the types of securities transacted (including but not limited to restricted securities).'' [26] As such, the proposed new optional Pre-Trade Risk Controls are familiar to market participants and are not novel.

The Exchange proposes to modify current paragraph (b)(2) regarding the setting and adjusting of the Pre-Trade Risk Controls to state that, in addition to Pre-Trade Risk Controls being available to be set at the MPID level or at one or more sub-IDs associated with that MPID, or both, that Pre-Trade Risk Controls to restrict the options class(es) transacted must be set per option class.[27]

The Exchange proposes to modify paragraph (c)(1) regarding ''Breach Action for Pre-Trade Risk Controls.'' First, the Exchange proposes to specify that ''[a] Limit Order that breaches any Single-Order Risk Control will be rejected.'' [28] The proposed functionality is consistent with the treatment of Limit Orders that breach the existing Single Order Risk Checks and simply extends the application of the breach action to the newly proposed Single-Order Risk Controls. Next, proposed Rule 6.40P–O(c)(1)(A)(ii) specifies that ''[a] Market Order that arrives during a pre-open state will be cancelled if the quantity remaining to trade after an Auction breaches the Single Order Maximum Notional Value Risk Limit,'' which functionality is identical to treatment of such interest under the current Rule.[29] Proposed Rule 6.40P–O(c)(1)(A)(ii) further specifies that ''[a]t all other times, a Market Order that triggers or breaches any Single-Order Risk Control will be rejected.'' [30] The proposed functionality is consistent with the treatment of Market Orders (that arrive other than during a pre-open state) that breach the existing Single Order Risk Checks and simply extends the application of the breach action to the newly proposed Single-Order Risk Controls. Further, proposed Rule 6.40P–O(c)(1)(A)(iii) addresses the breach action relevant to the new Single-Order Risk Control set forth in proposed Rule 6.40P–O(a)(2)(A)(ii) (*i.e.,* a breach of controls related to the price of an order or quote including percentage-based and dollar-based controls). As proposed, a Limit Order or quote that would breach a price control under paragraph (a)(2)((A)(ii) would be rejected or cancelled as specified in Rule 6.62P–O (a)(3)(A) (Limit Order Price Protection).[31]

[23] The one exception is the proposed pre-trade risk control in paragraph (a)(2)(A)(ii), discussed below, which would permit an Entering Firm to set dollar-based or percentage-based controls as to the price of an order that are equal to or more restrictive than the levels set out in Rule 6.62P–O(a)(3)(A) regarding Limit Order Price Protection. This risk check, like the Exchange's Limit Order Price Protection, is implemented in the matching engine.

[24] *See* proposed Rule 6.40P–O(a)(2)(A)(i) (setting forth ''controls related to the maximum dollar amount for a single order to be applied one time ('Single Order Maximum Notional Value Risk Limit') and the maximum number of contracts that may be included in a single order before it can be traded ('Single Order Maximum Quantity Risk Limit'). Orders designated GTC will be subject to these checks only once.'') Consistent with the foregoing changes, the Exchange proposes to delete current paragraph (B) to Rule 6.40P–O(a)(2)(B). *See id.*

[25] *See* supra notes 9–13.

[26] *See* proposed Rule 6.40P(a)(2)(A)(ii) and (a)(2)(A)(iv) as compared to NYSE American Rule 7.19E(b)(2)(B) and (b)(2)(F), respectively.

[27] *See, e.g.,* Rule 7.19E(d)(2) (specifying that pre-trade risk controls related to transacting in restricted securities must be set per symbol).

[28] *See* proposed Rule 6.40P(c)(1)(A)(i).

[29] *See* Rule 6.40P(c)(1)(A)(i) (providing, in relevant part, that ''[a] Market Order that breaches the designated limit of a Single Order Maximum Quantity Risk Limit'' will be ''canceled if the order was received during a pre-open state and the quantity remaining to trade after an Auction concludes breaches the designated limit.'').

[30] *See* proposed Rule 6.40P(c)(1)(A)(ii).

[31] *See* proposed Rule 6.40P(c)(1)(A)(iii).

Finally, the Exchange proposes to add new Commentary .02 to specify the interplay between the Exchange's Limit Order Price Protection (''LOPP'') functionality and the price controls that may be set by an Entering Firm pursuant to proposed paragraph (a)(2)(A)(ii). Proposed Commentary .02 specifies that an Entering Firm may set price controls under paragraph (a)(2)(A)(ii) that are equal to or more restrictive than levels set by the Exchange LOPP functionality.

Continuing Obligations of OTP Holders Under Rule 15c3–5

The proposed Pre-Trade Risk Controls described here are meant to supplement, and not replace, the OTP Holders' own internal systems, monitoring, and procedures related to risk management. The Exchange does not guarantee that these controls will be sufficiently comprehensive to meet all of an OTP Holder's needs, the controls are not designed to be the sole means of risk management, and using these controls will not necessarily meet an OTP Holder's obligations required by Exchange or federal rules (including, without limitation, the Rule 15c3–5 under the Act[32] (''Rule 15c3–5'')). Use of the Exchange's Pre-Trade Risk Controls will not automatically constitute compliance with Exchange or federal rules and responsibility for compliance with all Exchange and SEC rules remains with the OTP Holder.[33]

Timing and Implementation

The Exchange anticipates completing the technological changes necessary to implement the proposed rule change in the second quarter of 2023, but in any event no later than June 30, 2023. The Exchange anticipates announcing the availability of the Pre-Trade Risk Controls introduced in this filing by Trader Update in the first quarter of 2023.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[34] in general, and furthers the objectives of Section 6(b)(5) of the Act,[35] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[36]

Specifically, the Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed optional additional Pre-Trade Risk Controls would provide Entering Firms with enhanced abilities to manage their risk with respect to orders or quotes on the Exchange. The proposed additional Pre-Trade Risk Controls are not novel; they are based on existing risk settings already in place on NYSE American, as well as those on Cboe, Nasdaq, MEMX and MIAX Pearl equities exchanges,[37] and market participants are already familiar with the types of protections that the proposed risk controls afford. Moreover, the proposed new Single-Order Risk Controls (like the existing Single-Order Risk Checks) are options and, as such, Entering Firms are free to utilize or not at their discretion. As such, the Exchange believes that the proposed additional Pre-Trade Risk Controls would provide a means to address potentially market-impacting events, helping to ensure the proper functioning of the market.

In addition, the Exchange believes that the proposed rule change will protect investors and the public interest because the proposed additional Pre-Trade Risk Controls are a form of impact mitigation that will aid Entering Firms in minimizing their risk exposure and reduce the potential for disruptive, market-wide events. The Exchange understands that OTP Holders implement a number of different risk-based controls, including those required by Rule 15c3–5. The controls proposed here will serve as an additional tool for Entering Firms to assist them in identifying any risk exposure. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system by permitting Entering Firms to set price controls under paragraph (a)(2)(A)(ii) that are equal to or more restrictive than the levels established in the Exchange's LOPP functionality, which protects from aberrant trades, thus improving continuous trading and price discovery. To the extent that Entering Firms would like to further manage their exposure to aberrant trades, this proposed functionality affords such Firms the ability to set price controls at levels that are more restrictive than the LOPP levels. Additionally, because price controls set by an Entering Firm under paragraph (a)(2)(A)(ii) would function as a form of limit order price protection, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system for an order that would breach such a price control to be rejected or cancelled as specified per Rule 6.62P–O(a)(3)(A) regarding the LOPP.

Finally, the Exchange believes that the proposed rule change does not unfairly discriminate among the Exchange's OTP Holders because use of the proposed additional Pre-Trade Risk Controls is optional and is not a prerequisite for participation on the Exchange. In addition, because all orders on the Exchange would pass through the risk checks, there would be no difference in the latency experienced by OTP Holders who have opted to use the proposed additional Pre-Trade Risk Controls versus those who have not opted to use them. The Exchange does not believe it is unfairly discriminatory to have all orders on the Exchange pass through the risk checks, even for OTP Holders or OTP Firms that opt not to use the Exchange's pre-trade risk controls. As described above, the proposed risk checks are a functional enhancement to the Exchange's trading systems that the Exchange proposes to apply uniformly to all orders and quotes on the Exchange; by applying them uniformly, the Exchange would avoid producing incentives for all firms to

[32] *See* 17 CFR 240.15c3–5.

[33] *See also* Commentary .01 to Rule 6.40P–O, which provides that the Pre-Trade Risk Controls set forth in Rule 6.40P–O ''are meant to supplement, and not replace, the OTP Holder's or OTP Firm's own internal systems, monitoring, and procedures related to risk management and are not designed for compliance with Rule 15c3–5 under the Exchange Act. Responsibility for compliance with all Exchange and SEC rules remains with the OTP Holder or OTP Firm.'').

[34] 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(5).

[36] HPR argues that the Exchange should be compelled to submit this proposal as a fee filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act. *See* HPR Letter, *supra* note 6, at 6–8. But that provision only applies to rule filings ''establishing or charging a due, fee, or other charge imposed by the [SRO] . . . .'' Because the Exchange does not propose to charge any fees for the proposed services here, Section 19(b)(3)(A)(ii) is inapplicable. Notably, the Commission did not treat any of the other exchanges' filings for pre-trade risk controls listed above in notes 9–13 as fee filings.

[37] *See supra* notes 9–13.

avoid using the risk controls for fear of suffering a competitive disadvantage. Additionally, any latency imposed by the pre-trade risk controls proposed here is *de minimis* and would not have a material impact on the order flow of OTP Holders and OTP Firms that choose to employ non-exchange providers (such as HPR) to provide them with risk control solutions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposal will have a positive effect on competition because, by providing Entering Firms additional means to monitor and control risk, the proposed rule will increase confidence in the proper functioning of the markets. The Exchange believes the proposed additional Pre-Trade Risk Controls will assist Entering Firms in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system. As a result, the level of competition should increase as public confidence in the markets is solidified.

In its letter, HPR contends that it is an unnecessary burden on competition for the Exchange to have all orders—even the orders of OTP Holders and OTP Firms that choose not to use the proposed pre-trade risk controls—to pass through the Exchange's checks because doing so will reduce customer demand for HPR's risk control services. HPR argues that by imposing latency from its risk checks on all orders, the Exchange has created a ''latency tax'' that would encourage customers to use the Exchange's risk controls instead of third-party risk solutions like HPR's.[38] These assertions are factually incorrect and obscure the very real differences between the Exchange's pre-trade risk controls and the services that HPR offers. The Exchange understands that HPR's enterprise risk management solutions, like those of its competitors, permit its clients to track aggregated risk across all markets and provide consolidated risk management capabilities. In contrast, exchange based-solutions such as the Exchange's only offer tools to manage risk across the Exchanges and its affiliate exchanges (*e.g.,* the NYSE Group exchanges). The Exchange's proposed risk checks would not and could not replace HPR's far broader offering. In addition, as the Exchange made clear in its filing for the Initial Pre-Trade Risk Controls and repeats here, the Exchange's pre-trade risk controls are not a complete Rule 15c3–5 solution. The Exchange's risk controls are meant to supplement, and not replace, an OTP Holder's or OTP Firm's own internal risk management systems (which firms may outsource to providers like HPR), and the Exchange's controls are not designed to be the sole means of risk management that any firm uses. Additionally, any latency imposed by the proposed pre-trade risk controls proposed here is *de minimis* and would not have a material impact on the order flow of OTP Holders and OTP Firms that choose to employ non-exchange providers (such as HPR) to provide them with risk control solutions.

Finally, the Exchange believes it would be an unfair burden on competition for the Commission to suspend and ultimately disapprove the pre-trade risk controls proposed here, where substantially identical controls are already in place on numerous of the Exchange's competitor exchanges.[39] Since 2017, equities exchanges have been adding pre-trade risk controls to their trading systems. And, in 2022, the Exchange adopted the Initial Pre-Trade Risk Controls. It would be an unjustifiable burden on competition and on the Exchange for the Commission to permit all equities exchanges to offer such functionality *except* for the Exchange and its affiliates mentioned in the HPR Letter. Specifically, the Exchange would be at a significant competitive disadvantage vis-à-vis other equities exchanges that already offer the type of pre-trade risk controls proposed in this filing as OTP Holders and OTP Firms may choose to direct order flow away from the Exchange until it is able to offer such competing pre-trade risk controls.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[38] *See* HPR Letter, *supra* note 6, at 4 (claiming the Exchange has ''architected the proposed risk controls to give [itself] an unfair and anti-competitive latency advantage over non-exchange offerings provided by broker-dealers or vendors such as HPR.'').

[39] *See supra* notes 9–13.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[40] and Rule 19b–4(f)(6) thereunder.[41] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[42]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[43] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2023–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange

[40] 15 U.S.C. 78s(b)(3)(A)(iii).

[41] 17 CFR 240.19b–4(f)(6).

[42] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[43] 15 U.S.C. 78s(b)(2)(B).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2023–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2023–24 and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05686 Filed 3–20–23; 8:45 am]

BILLING CODE 8011–01–P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97149; File No. SR–MIAX–2023–11]

Self-Regulatory Organizations: Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Non-Substantively Amend the MIAX Fee Schedule

March 15, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4thereunder,[2] notice is hereby given that on March 3, 2023, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Fee Schedule (''Fee Schedule'') to make minor, non-substantive clarifying changes.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to make minor, non-substantive clarifying changes. Specifically, the Exchange proposes to amend instances of the phrases ''MIAX Select Symbols'' and ''non-MIAX Select Symbols'' in Section 1)a)iii) of the Fee Schedule to clarify that the terms ''Select Symbols'' and ''non-MIAX Select Symbols'' refer to options listed on MIAX.

Background

The Exchange initially created the list of Select Symbols on March 1, 2014,[3] and has added, removed and amended symbol names of option classes from that list since that time.[4] Select Symbols are rebated slightly higher in certain Priority Customer Rebate Program (''PCRP'')[5] tiers and segments than non-Select Symbols. Currently, the term ''MIAX Select Symbols'' means options overlying AAL, AAPL, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CLF, CVX, DAL, EBAY, EEM, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, INTC, IWM, JNJ, JPM, KMI, KO, META, MO, MRK, NFLX, NOK, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, SPY, T, TSLA, USO, VALE, WBA, WFC, WMB, X, XHB, XLE, XLF, XLP, XOM and XOP.[6]

Proposal

First, the Exchange proposes to amend two column headers of the PCRP Table in Section 1)a)iii) of the Fee

[3] *See* Securities Exchange Act Release No. 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13).

[4] *See, e.g.,* Securities Exchange Act Release Nos. 89530 (August 12, 2020), 85 FR 50845 (August 18, 2020) (SR–MIAX–2020–26); 88850 (May 11, 2020), 85 FR 29497 (May 15, 2020) (SR–MIAX–2020–09); 87964 (January 14, 2020), 85 FR 3435 (January 21, 2020) (SR–MIAX–2020–01); 87790 (December 18, 2019), 84 FR 71037 (December 26, 2019) (SR–MIAX–2019–49); 85314 (March 14, 2019), 84 FR 10359 (March 20, 2019) (SR–MIAX–2019–07; 81998 (November 2, 2017), 82 FR 51897 (November 8, 2017) (SR–MIAX–2017–45); 81019 (June 26, 2017), 82 FR 29962 (June 30, 2017) (SR–MIAX–2017–29); 79301 (November 14, 2016), 81 FR 81854 (November 18, 2016) (SR–MIAX–2016–42); 74291 (February 18, 2015), 80 FR 9841 (February 24, 2015) (SR–MIAX–2015–09); 74288 (February 18, 2015), 80 FR 9837 (February 24, 2015) (SR–MIAX–2015–08); 73328 (October 9, 2014), 79 FR 62230 (October 16, 2014) (SR–MIAX–2014–50); 72567 (July 8, 2014), 79 FR 40818 (July 14, 2014) (SR–MIAX–2014–34); 72356 (June 10, 2014), 79 FR 34384 (June 16, 2014) (SR–MIAX–2014–26); 71700 (March 12, 2014), 79 FR 15188 (March 18, 2014) (SR–MIAX–2014–13).

[5] *See* section 1)a)iii) of the Fee Schedule for a complete description of the PCRP.

[6] *See* Fee Schedule, note 14.

Schedule to remove the word ''MIAX'' from the table columns, ''Per Contract Credit for Simple Orders in non-MIAX Select Symbols'' and ''Per Contract Credit for Simple Orders in MIAX Select Symbols.'' Second, the Exchange proposes to add the phrase ''Listed on MIAX'' to those same two table columns so that with the proposed changes, those columns in the PCRP Table will read as follows: ''Per Contract Credit for Simple Orders in non-Select Symbols Listed on MIAX'' and ''Per Contract Credit for Simple Orders in Select Symbols Listed on MIAX.''

Additionally, the Exchange proposes to remove the word ''MIAX'' and add the phrase ''listed on MIAX'' in footnote 14, so that with the proposed changes, footnote 14 will read as follows: ''The term 'Select Symbols' means options listed on MIAX overlying AAL, AAPL, AMAT, AMD, AMZN, BA, BABA, BB, BIDU, BP, C, CAT, CLF, CVX, DAL, EBAY, EEM, FCX, GE, GILD, GLD, GM, GOOGL, GPRO, HAL, INTC, IWM, JNJ, JPM, KMI, KO, META, MO, MRK, NFLX, NOK, ORCL, PBR, PFE, PG, QCOM, QQQ, RIG, SPY, T, TSLA, USO, VALE, WBA, WFC, WMB, X, XHB, XLE, XLF, XLP, XOM and XOP.''

Finally, the Exchange proposes to amend one of the explanatory paragraphs below the PCRP Table that references ''MIAX Select Symbols'' to be in line with the changes proposed above. Accordingly, with the proposed change, the explanatory sentence will read as follows: ''For each Priority Customer order transmitted by that Member which is executed electronically on the Exchange in Select Symbols in simple order executions, MIAX shall credit each member at the separate per contract rate for Select Symbols listed on MIAX.''

The Exchange notes that it is not changing the application of fees or rebates to Select Symbols or any of the rates in the PCRP Table. The purpose of these proposed changes is to promote clarity within the Exchange's Fee Schedule. The proposed change is immediately effective.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest.

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes make clarifying, non-substantive edits to the Fee Schedule. The Exchange believes that these proposed changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

Additionally, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) [9] because it will not permit unfair discrimination among customers, brokers, or dealers because the clarification applies equally to all Members with similarly situated Priority Customer orders in Select Symbols listed on MIAX in the PCRP. All similarly situated Priority Customer orders in Select Symbols are subject to the same rebate schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not a competitive filing but rather is designed to remedy minor non-substantive issues and provide added clarity to the Fee Schedule in order to avoid potential confusion on the part of market participants. Consequently, the Exchange does not believe that the proposed change will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and subparagraph (f)(6) of Rule 19b–4thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. MIAX has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. As MIAX represents above, the proposed rule change would make minor, non-substantive changes to clarify certain references in MIAX's fee schedule to options listed on MIAX. MIAX states that waiver of the operative delay would allow MIAX to immediately clarify its fee schedule and avoid any potential investor confusion. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change makes non-substantive clarifying changes and thus does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2023–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2023–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2023–11, and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–05688 Filed 3–20–23; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12), (59).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17812 and #17813; New Hampshire Disaster Number NH–00062]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of New Hampshire

AGENCY: U.S. 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 New Hampshire (FEMA–4693–DR), dated 03/15/2023.

Incident: Severe Storms and Flooding.

Incident Period: 12/22/2022 through 12/25/2022.

DATES: Issued on 03/15/2023.

Physical Loan Application Deadline Date: 05/15/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 12/15/2023.

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 Recovery & Resilience, 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 03/15/2023, 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: Belknap, Carroll, Coos, Grafton.

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 17812 6 and for economic injury is 17813 0.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–05681 Filed 3–20–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–023; FMCSA–2013–0109; FMCSA–2013–0444; FMCSA–2014–0215; FMCSA–2016–0008; FMCSA–2018–0053; FMCSA–2018–0056, FMCSA–2019–0036]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for nine individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on February 3, 2023. The exemptions expire on February 3, 2025.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2010–0203, FMCSA–2013–0109, FMCSA–2013–0444, FMCSA–2014–0215, FMCSA–2016–

0008, FMCSA–2018–0053, FMCSA–2018–0056, or FMCSA–2019–0036) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On January 24, 2023, FMCSA published a notice announcing its decision to renew exemptions for nine individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (88 FR 4288). The public comment period ended on February 23, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the nine renewal exemption applications and comments received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

As of February 3, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (88 FR 4288):

Jeffrey Ballweg (WI)

David Crouch (KY)

Peter DellaRocco (PA)

Ronnie Moody (NC)

Brian Porter (PA)

Isaac Rogers (IL)

Thomas Tincher (NC)

Keith White (PA)

Floyd Williams (VA)

The drivers were included in docket number FMCSA–2010–0203, FMCSA–2013–0109, FMCSA–2013–0444, FMCSA–2014–0215, FMCSA–2016–0008, FMCSA–2018–0053, FMCSA–2018–0056, or FMCSA–2019–0036. Their exemptions were applicable as of February 3, 2023 and will expire on February 3, 2025.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–05753 Filed 3–20–23; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2022–0047]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 15 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on February 28, 2023. The exemptions expire on February 28, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, (FMCSA–2022–0047) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On January 24, 2023, FMCSA published a notice announcing receipt of applications from 15 individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (88 FR 4286). The public comment period ended on February 23, 2023, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel. The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the commercial driver's license Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. A summary of each applicant's seizure history was discussed in the January 24, 2023, **Federal Register** notice (88 FR 4286) and will not be repeated in this notice.

These 15 applicants have been seizure-free over a range of 33 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5T; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of their driver's qualification file if they are self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 15 exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition in § 391.41(b)(8), subject to the requirements cited above:

Andrew Briggs (WI)
Joel Clapper (MI)
Trent Clark (PA)
John Girdley (KY)
Larry Kirby (MO)
Matthew Lynch (PA)
Edward Malicki (NY)
Jared Meyers (MS)
James Niemoller (MD)
Joshua Pattyn (OR)
Joe W. Porath (ID)
Jon Rollins (OH)
Garrett Sager (IA)
Colin Trummer (OH)
Shawn Vanliew (MN)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–05754 Filed 3–20–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2022–0133]

Agency Information Collection Activities: Request for Comments; Renewal of a Previously Approved Information Collection: U.S. Department of Transportation, Individual Complaint of Employment Discrimination Form

AGENCY: Office of the Secretary, U.S. Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the U.S. Department of Transportation (DOT) will forward the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for renewal of a previously approved collection. The ICR describes the nature of the information collection and its expected cost and burden hours. The OMB approved the form in 2020 with its renewal required by April 30, 2023. The **Federal Register** Notice with a 60-day comment period soliciting comments on the form renewal was published on November 18, 2022 [FR Vol. 87, No. 222, page 69386]. No comments were received.

DATES: Comments on this notice are due by April 16, 2023.

FOR FURTHER INFORMATION CONTACT: Barbara Dougherty, Deputy Director, Departmental Office of Civil Rights, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, 202–366–9850 (office), *barbara.dougherty@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Individual Complaint of Employment Discrimination Form.

Form Number: DOT–F 1050–8. OMB Control Number: 2105–0556.

Type of Request: Renewal of a previously approved collection.

Abstract: DOT will utilize the form to collect information necessary to process EEO discrimination complaints filed by individuals who are Federal employees, former employees or applicants for employment with the Department. These complaints are processed in accordance with the U.S. Equal Employment Opportunity Commission's regulations, Title 29, Code of Federal Regulations, Part 1614, as amended. DOT will use the form to: (a) Request requisite information from the applicant for processing his/her EEO discrimination complaint; and (b) obtain information to identify an individual or his or her attorney or other representative, if appropriate. An applicant's filing of an EEO discrimination complaint is solely voluntary. The DOT estimates that it takes an applicant approximately one hour to complete the form.

Affected Public: Federal employees, former employees, or applicants for employment with the Department.

Estimated Number of Respondents: 275 per year.

Estimated Total Annual Estimated Burden: 275 hours.

Frequency of Collection: An individual's filing of an EEO complaint is solely voluntary.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

Comments 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. All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on March 15, 2023.

Barbara Dougherty,

Deputy Director, Departmental Office of Civil Rights, U.S. Department of Transportation.

[FR Doc. 2023–05695 Filed 3–20–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nomination for Appointment to the Advisory Committee on Disability Compensation

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Advisory Committee on Disability Compensation (the Committee), is seeking nominations of qualified candidates to be considered for appointment as a member of the Advisory Committee for the 2023–2024 membership cycle.

DATES: Nominations for membership on the Committee must be received by April 30, 2023, no later than 4 p.m., Eastern Standard Time. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nomination packages should be emailed to the Designated Federal Officer (DFO), Jadine Piper, at *21C_ACDC.VBACO@va.gov.*

SUPPLEMENTARY INFORMATION: In carrying out the duties set forth, the Committee provides a Congressionally mandated biennial report to the Secretary, which includes:

(1) Providing ongoing assessment of the effectiveness, maintenance, and periodic readjustment of the VA Schedule for Rating Disabilities (VASRD).

(2) Reviewing programs and activities within VA that relate to the payment of disability compensation and providing recommendations on the most appropriate means of responding to the needs of Veterans relating to disability compensation in the future.

(3) Assessing the needs of Veterans with respect to compensation benefits and VASRD by meeting with VA officials, Veterans Service Organizations (VSO), and other stakeholders.

Management and support services for the Committee are provided by VBA.

Authority: The Committee is authorized by 38 U.S.C. 546 and operates under the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2.

Membership Criteria: VBA is requesting nominations for vacancies on the Committee. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including, but not limited to:

(1) Individuals with experience with the provision of disability compensation by the Department; or

(2) Individuals who are leading medical and scientific experts in relevant fields.

In accordance with § 546, the Secretary shall determine the terms of service, and pay and allowances of the Committee members. A term of service may not exceed four years. The Secretary may reappoint any member for additional terms of service.

Professional Qualifications: In addition to the criteria above, VA seeks:

(1) Diversity in professional and personal qualifications (*e.g.,* current employment, indicate if retired); (2) Experience working in large and complex organizations; (3) Experience in military service (please identify branch, rank, deployments, status to include active/retired); (4) Current work with Veterans (if employed as by a Veterans Service Organization, indicate current, prior, or retired and which organization); (5) Disability compensation subject matter expertise; and (6) Diversity in demographics (*e.g.,* gender; ethnicity, geographic location, etc.).

Requirements for Nomination Submission: Nomination packages must be typewritten (12-point font) (one nomination per nominator); and the nomination package should include:

(1) a cover letter from the nominee and (2) a current résumé or curriculum vitae (CV). The cover letter must summarize: The nominee's interest in serving on the committee and contributions they can make to the work of the committee; any relevant Veterans' service activities they are currently engaged in; and the military branch affiliation and timeframe of military service (if applicable). Finally, the cover letter *must* include the nominee's complete contact information (name, address, email address and phone number); and a statement indicating a willingness to serve as a member of the Committee and confirming that they are not a Federally-registered lobbyist.

The résumé/CV should show professional and/or work experience and Veterans' service involvement—especially service that involves disability compensation issues. To promote inclusion and demographic balance of membership, please include as much information related to your race, national origin, disability status, minority Veteran status, or any other factors that may give you a diverse perspective on disability compensation, as well as a summary of your experience and qualifications relative to the *membership criteria* and *professional qualifications* listed above.

Self-nominations are acceptable. Any letters of nomination from organizations or other individuals must accompany the package when it is submitted. Letters of nomination submitted without a complete nomination package will not be considered. If you are submitting a package on behalf of an individual, it must include all of the required components and complete contact information. Do not submit a package without the nominee's consent or awareness.

Membership Terms: Individuals selected for appointment to the Committee shall be invited to serve a two-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of its Federal advisory committees is fairly balanced in terms of points of view represented. Every effort is made to ensure that a broad representation of geographic areas, gender, and racial and ethnic minority groups, and that the disabled are given consideration for membership. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership.

Dated: March 15, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–05662 Filed 3–20–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97151; File No. 4–698]

Joint Industry Plan; Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail

I. Introduction

On March 13, 2023, the Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''): [1] BOX Exchange LLC; Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX, LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants,'' ''self-regulatory organizations,'' or ''SROs'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 (''Exchange Act''),[2] and Rule 608 thereunder,[3] a proposed amendment to the CAT NMS Plan to implement a revised funding model (the ''Funding Proposal'') for the consolidated audit trail (''CAT'') and to establish a fee schedule for Participant CAT fees in accordance with the Funding Proposal.[4] *Exhibit A,* attached hereto, contains proposed revisions to Articles I and XI of the CAT NMS Plan as well as proposed Appendix B to the Plan containing the fee schedule. *Exhibit B,* attached hereto, contains a comparison of the Funding Proposal to the executed share funding proposal filed by CAT LLC on May 13, 2022,[5] as amended in two partial amendments,[6] and later withdrawn on March 1, 2023.[7] In addition, CAT LLC provided an example of how a Historical CAT Assessment would be calculated pursuant to the Funding Proposal, for illustrative purposes only, as attached hereto as *Exhibit C.* The Commission is publishing this notice to solicit comments from interested persons on the amendment.[8]

II. Description of the Plan

Set forth in this Section II is an executive summary of the Funding Proposal, along with information required by Rule 608(a) under the Exchange Act,[9] and a description of the proposed revisions to the CAT NMS Plan, substantially as prepared and submitted by the Participants to the Commission.[10]

Executive Summary

CAT LLC proposes to replace the funding model set forth in Article XI of the CAT NMS Plan (the ''Original Funding Model'') with the Funding Proposal. The Original Funding Model involves a bifurcated approach, where costs associated with building and operating the CAT would be borne by (1) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tiered fees based on message traffic for Eligible Securities, and (2) Participants and Industry Members that are Execution Venue ATSs for Eligible Securities through fixed tiered fees based on market share. In contrast, the Funding Proposal would charge fees based on executed equivalent share volume of transactions in Eligible Securities rather than based on market share and message traffic.

Under the Funding Proposal, CAT LLC proposes to establish two categories of CAT fees. The first category of CAT fees would be fees (''CAT Fees'') payable by Participants and Industry Members that are CAT Executing Brokers for the Buyer and for the Seller with regard to CAT costs not previously paid by the Participants (''Prospective CAT Costs''). The CAT Fee for each transaction would be calculated by multiplying the executed equivalent shares in the transaction by one-third and the applicable ''Fee Rate.'' The Funding Proposal would describe in detail each aspect relevant to the CAT Fees, including a description of the Prospective CAT Costs, the calculation of the Fee Rate, the definition of ''CAT Executing Broker,'' the fee filings made pursuant to section 19(b) of the Exchange Act for CAT Fees, and information available related to CAT Fees, both publicly and upon request.

The second category of CAT fees would be fees (''Historical CAT Assessments'') to be payable by Industry Members that are CAT Executing Brokers for the Buyer and for the Seller with regard to CAT costs previously paid by the Participants (''Past CAT Costs''). The Historical CAT Assessment for each transaction would be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and the applicable ''Historical Fee Rate.'' Like with the CAT Fees related to Prospective CAT Costs, the Funding Proposal would describe in detail each aspect relevant to Historical CAT Assessments, including a description of Historical CAT Costs, the calculation of the Historical Fee Rate, the definition of ''CAT Executing Broker,'' the fee filings made pursuant to section 19(b) of the Exchange Act for Historical CAT Assessments, and information available related to Historical CAT Assessments, both publicly and upon request.

The Participants separately intend to file rule filings under section 19(b) of the Exchange Act and Rule 19b–4(f)(2) thereunder to establish the CAT Fees and Historical CAT Assessments to be charged to Industry Members based on the Funding Proposal set forth in the CAT NMS Plan.

CAT LLC has gone through an extensive process of evaluating and seeking comment on various funding models since the inception of CAT. In addition to the variety of alternative models considered by CAT LLC (as described in Section A.10 of this filing), the proposed CAT funding model has been subject to substantial public review and comment via the proposed amendment to the CAT NMS Plan published by the SEC on May 25, 2022

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[1] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

[2] 15 U.S.C. 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] *See* Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated March 13, 2023 (''Transmittal Letter'').

[5] *See* Securities Exchange Act Release No. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022). Comments received can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-a.htm.*

[6] *See* Securities Exchange Act Release No. 96394 (Nov. 28, 2022), 87 FR 74183 (Dec. 2, 2022). Comments received can be found on the Commission's website at *https://www.sec.gov/comments/4-698/4-698-a.htm. See also* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Feb. 15, 2023).

[7] *See* Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 1, 2023).

[8] 17 CFR 242.608.

[9] *See* 17 CFR 242.608(a).

[10] *See* Transmittal Letter, *supra* note 4. Unless otherwise defined herein, capitalized terms used herein are defined as set forth in the CAT NMS Plan.

(the ''2022 Funding Proposal''),[11] the subsequent order instituting proceedings related to the 2022 Funding Proposal[12] and two partial amendments regarding the 2022 Funding Proposal.[13] Thirteen comment letters were submitted in response to the 2022 Funding Proposal, as amended, and CAT LLC submitted three detailed responses to comments.[14] CAT LLC withdrew the 2022 Funding Proposal on March 1, 2023.[15] Subject to certain minor revisions, the Funding Proposal set forth herein is the same proposal as the 2022 Funding Proposal, as amended in the two partial amendments. The minor changes made to the 2022 Funding Proposal are noted in this filing, and separately identified in *Exhibit B* to this filing.

The Funding Proposal would provide reasonable fees that are equitably allocated, not unfairly discriminatory, and do not impose an undue burden on competition, in that the proposal reflects a reasonable effort to allocate costs based on the extent to which different CAT Reporters participate in and benefit from the equities and options markets. Moreover, the Funding Proposal would be consistent with past fee structures that have been approved by the Commission. It also is transparent, would be relatively easy to calculate and administer, and is designed not to have an impact on market activity because it is neutral as to the location and manner of execution. The Exchange Act does not require CAT LLC to demonstrate that the Funding Proposal is *superior to any other potential proposal.* Instead, CAT LLC must demonstrate that the Funding Proposal is *consistent with the Exchange Act and the rules and regulations thereunder.* CAT LLC believes that the Funding Proposal satisfies the requirements of the Exchange Act and should be approved by the Commission.

Requirements Pursuant to Rule 608(a)

A. Description of the Proposed Amendments to the CAT NMS Plan

CAT LLC describes in detail the Funding Proposal in this Section A:

- *Definition of CAT Executing Broker:* CAT LLC describes the definition of a ''CAT Executing Broker'' in Section A.1 of this filing.
- *CAT Budget:* Budgeted CAT costs are described in Section A.2 of this filing.
- *CAT Fees related to Prospective CAT Costs:* CAT LLC discusses CAT Fees related to Prospective CAT Costs in Section A.3 of this filing.
- *Historical CAT Assessments:* CAT LLC discusses Historical CAT Assessments related to Historical CAT Costs in Section A.4 of this filing.
- *CAT Fee Schedule for Participants:* To implement the CAT fees to be paid by the Participants under the Funding Proposal, CAT LLC proposes to add a fee schedule, entitled ''Consolidated Audit Trail Funding Fees,'' to Appendix B of the CAT NMS Plan. This fee schedule is discussed in Section A.5 of this filing.
- *Additional Changes from Original Funding Model:* CAT LLC discusses additional proposed revisions to Article XI of the CAT NMS Plan to implement the change from the Original Funding Model to the Funding Proposal in Section A.6 of this filing.
- *Billing and Collection of CAT Fees:* The billing and collection of CAT fees are discussed in Section A.7 of this filing.
- *Illustrative Example of Funding Proposal:* CAT LLC provides an illustrative example of how a Historical CAT Assessment would be calculated pursuant to the Funding Proposal in Section A.8 of this filing. The illustrative example is set forth in detail in *Exhibit C* to this filing.
- *Advantages of and Support for Funding Proposal:* CAT LLC proposes to adopt the Funding Proposal as it provides a variety of advantages over the Original Funding Model. CAT LLC discusses the advantages of the Funding Proposal in Section A.9 of this filing.
- *Alternative Funding Models Considered:* CAT LLC discusses the advantages and disadvantages of a variety of alternative funding models to the Funding Proposal in Section A.10 of this filing.
- *Satisfaction of Exchange Act and CAT NMS Plan Requirements:* CAT LLC discusses how the Funding Proposal satisfies each of the funding principles and other requirements of the CAT NMS Plan, as proposed to be revised herein, as well as the applicable requirements of the Exchange Act in Section A.11 of this filing.

1. Definition of CAT Executing Broker

Under the Funding Proposal, each Industry Member that is a CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') would be required to pay CAT Fees and Historical CAT Assessments. Accordingly, CAT LLC proposes to add a definition of the term ''CAT Executing Broker'' to Section 1.1 of the CAT NMS Plan. CAT LLC would define ''CAT Executing Broker'' to mean:

> (a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.

Under the Participant Technical Specifications, for transactions occurring on a Participant exchange, there is a field for the exchange to report the market participant identifier (''MPID'') of ''the member firm that is responsible for the order on this side of the trade.''[16] The Industry Members

[11] Securities Exchange Act Rel. No. 94984 (May 25, 2022), 87 FR 33226 (June 1, 2022) (''2022 Funding Proposal Release'').

[12] Securities Exchange Act Rel. No. 95634 (Aug. 30, 2022), 87 FR 54558 (Sept. 6, 2022).

[13] Securities Exchange Act Rel. No. 96394 (Nov. 28, 2022), 87 FR 74183 (Dec. 2, 2022) (''Partial Amendment I''), and Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Feb. 15, 2023) (''February 2023 Proposed Partial Amendment'').

[14] Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Aug. 16, 2022); Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Nov. 15, 2022); and February 2023 Proposed Partial Amendment.

[15] Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 1, 2023).

[16] *See* Section 4.7 (Order Trade Event) and Section 5.2.5.1 (Simple Option Trade Event: Side Details) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0–r17 (Feb. 21, 2023), *https://www.catnmsplan.com/*

Continued

identified in these fields for the transaction reports would be the CAT Executing Brokers for transactions executed on an exchange. Specifically, the following fields of the Participant Technical Specifications would indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) [17]

No.	Field name	Data type	Description	Include key
12.*n*.8/13.*n*.8	member	Member Alias	The identifier for the member firm that is responsible for the order on this side of the trade. Not required if there is no order for the side as indicated by the NOBUYID/NOSELLID instruction. This must be provided if orderID is provided.	C

OPTION TRADE (OT) [18]

No.	Field name	Data type	Description	Include key
16.*n*.13/17.*n*.13	member	Member Alias	The identifier for the member firm that is responsible for the order.	R

FINRA is required to report to the CAT transactions in Eligible Securities reported to a FINRA trade reporting facility (*i.e.,* the FINRA Trade Reporting Facilities (''TRF''), Over-the Counter Reporting Facility (''ORF'') and Alternative Display Facility (''ADF'')).[19] Under the Participant Technical Specifications, for such transactions reported to a FINRA trade reporting facility, FINRA is required to report the MPID of the executing party as well as the MPID of the contra-side executing party. The Industry Members identified in these two fields for the transaction reports would be the CAT Executing Brokers for over-the-counter transactions. Specifically, the following fields of the Participant Technical Specifications will indicate the CAT Executing Brokers for the transactions executed otherwise than on an exchange.

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF) [20]

No.	Field name	Data type	Description	Include key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party	C

Note that a CAT Executing Broker in over-the-counter transactions identified on the TRF/ORF/ADF Transaction Data Event is determined based on the tape or media report, that is, a trade report that is submitted to a FINRA trade reporting facility and reported to and publicly disseminated by the appropriate exclusive Securities Information Processor. A CAT Executing Broker for over-the-counter transactions is *not* determined based on a non-tape report (*e.g.,* a regulatory report or a clearing report), which are not publicly disseminated.[21]

Therefore, with respect to transactions on an exchange and over-the-counter transactions, CAT LLC would use transaction reports reported to the CAT by FINRA or the exchanges to identify the transaction for purposes of calculating the CAT fees as well as the CAT Executing Broker for each transaction for purposes of calculating the CAT fees. Accordingly, all data used to calculate the fees under the Funding Proposal would be CAT Data, and, therefore, it would be available through the CAT for calculating CAT fees. FINRA CAT would be responsible for calculating the CAT fees and submitting invoices to the CAT Executing Brokers based on this CAT Data. Moreover, defining a ''CAT Executing Broker'' in this way is a simpler analytical approach than other potential approaches for defining the relevant executing broker, such as identifying the originating broker for the order via an evaluation of CAT linkages.[22]

CAT LLC proposes to make use of the defined term ''CAT Executing Broker'' in Proposed Section 11.3 in describing the Funding Proposal. CAT LLC believes the proposed definition of CAT Executing Broker and the use of the defined term in Article XI would set forth clearly when and in what situations an Industry Member would be considered a CAT Executing Broker for purposes of the Funding Proposal.

a. Treatment of ATSs

The Funding Proposal would describe how CAT fees would be assessed with

sites/default/files/2023-02/02.21.2023-CAT-Reporting-Technical-Specifications-for-Participants-4.1.0-r17.pdf.

[17] *See* Table 23, Section 4.7 (Order Trade Event) of the CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0–r17 (Feb. 21, 2023), *https://www.catnmsplan.com/sites/default/files/2023-02/02.21.2023-CAT-Reporting-Technical-Specifications-for-Participants-4.1.0-r17.pdf.*

[18] *See* Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants (Feb. 21, 2023).

[19] *See* Section 6.1 of the CAT Reporting Technical Specifications for Plan Participants (Feb. 21, 2023).

[20] *See* Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants (Feb. 21, 2023).

[21] There is an exception to this statement for away-from-market trades. These are non-media trades reported to the TRF with an ''SRO Required Modifier Code'' of ''R''.

[22] Each CAT Executing Broker could determine, but would not be required, to pass their CAT fees through to their clients, who, in turn, could pass their CAT fees to their clients, until the fee is imposed on the ultimate participant in the transaction.

regard to transactions executed on ATSs, including clarification as to which party to an ATS transaction would be treated as the CAT Executing Broker for purposes of the Funding Proposal. The definition of a ''CAT Executing Broker'' as proposed above would determine the CAT Executing Brokers for transactions executed on an ATS. Specifically, if an ATS is identified as the executing party and/or the contra-side executing party in the TRF/ORF/ADF Transaction Data Event, then the ATS would be a CAT Executing Broker for purposes of the Funding Proposal. If the ATS is identified as the executing party for the buyer in such transaction reports, then the ATS would be the CAT Executing Broker for the Buyer, and if the ATS is identified as the executing party for the seller in such transaction reports, then the ATS would be the CAT Executing Broker for the Seller. An ATS also could be identified as both the CAT Executing Broker for the Buyer and the CAT Executing Broker for the Seller. ATSs would determine the executing party and the contra-side executing party reported to FINRA's equity trading facilities in accordance with the transaction reporting requirements for FINRA's equity trading facilities.

b. Treatment of Fractional Shares

The Funding Proposal also would address how transactions in fractional shares would be treated. As described above, CAT fees would be charged based on the Equity Order Trade Events, Options Trade Events and the ADF/ORF/TRF Transaction Data Events in the Participant Technical Specifications. None of these transaction reports provide for fractional quantities; the transaction reports must reflect whole shares/contracts. Therefore, under the Funding Proposal, CAT fees would be calculated without reference to fractional shares or fractional share components of executed orders.[23]

c. Non-Industry Members on Transaction Reports

The Funding Proposal also would address how transactions that involve a non-Industry Member would be treated under the Funding Proposal (*e.g.,* for internalized trades or trades with a non-FINRA member). The FINRA trade reporting requirements state that ''[w]hen reporting a trade with a broker-dealer that is not a FINRA member, the non-member should not be identified on the trade report as the contra party to the trade.'' [24] Accordingly, when the transaction in these cases is reported to CAT via the TRF/ORF/ADF Transaction Data Event, the field for the reportingExecutingMpid would be populated with the MPID of the executing broker and the field for the contraExecutingMpid would be blank or null. As noted above, the reportingExecutingMpid is a required field (include key = 'R') that must be entered on all CAT reports, but the contraExecutingMpid field is conditional; it does not need to be populated, specifically to account for cases like those at issue here (*e.g.,* transactions with a non-FINRA member). Therefore, in those scenarios where the contraExecutingMpid is blank, the FINRA member identified in the reportingExecutingMpid field would be treated as the CAT Executing Broker for both the buy-side and the sell-side of the transaction, that is, as the CEBS and CEBB.

In addition, under the FINRA trade reporting requirements, there is a limited exception to the general rule about not reporting a non-member as the contra party to the trade. Specifically, pursuant to FINRA Trade Reporting FAQ 202.1, ''[t]here is a limited exception where a Canadian non-member firm uses the FINRA/NASDAQ TRF or ORF for purposes of comparing trades pursuant to a valid Non-Member Addendum to the NASDAQ Services Agreement. In that instance, however, the Canadian non-member must appear on the trade report as the contra party to the trade and not as the reporting party. For any trade report on which a Canadian non-member appears as a party to the trade, the FINRA member must appear as the reporting party.'' In this case involving the Canadian non-member firm exception, the executing broker identified in the reportingExecutingMpid field would be billed for both sides of the transaction.

CAT LLC proposes to include language in the definition of ''CAT Executing Broker'' to address these scenarios. Specifically, CAT LLC proposes to state the following in the definition of ''CAT Executing Broker: ''in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.''

d. Cancellations and Corrections

The Funding Proposal also would provide for cancellations and corrections. CAT LLC expects to determine CAT fees based on the transaction reports for a month as of a particular day. To the extent that changes are made to the transaction reports on or before the day the CAT fees are determined for the given month, the changes will be reflected in the monthly bill. To the extent that changes are made to the transaction reports after the day the CAT fees are determined for that month, subsequent bills will reflect any changes via debits or credits, as applicable. As CAT LLC is required under the CAT NMS Plan to adopt policies, procedures, and practices regarding the billing and collection of fees,[25] CAT LLC will establish specific policies and procedures regarding the treatment of such adjustments as those related to cancellations and corrections. Furthermore, CAT LLC will inform Industry Members and other market participants of these policies and procedures via FAQs, CAT Alerts and/or other appropriate methods.

2. CAT Budget

Section 11.1(a) of the CAT NMS Plan describes the requirement for the Operating Committee to approve an operating budget for CAT LLC on an annual basis. It requires the budget to ''include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.'' CAT LLC proposes to provide additional detail regarding the CAT LLC operating budget by adding proposed subparagraphs (i) and (ii) to Section 11.1(a) of the CAT NMS Plan. Such detailed information would provide Participants, Industry Members and other interested parties with a clear understanding of the CAT budget, and, in turn, the calculation of the CAT Fees.

a. Budgeted CAT Costs

CAT LLC proposes to add subparagraph (i) to Section 11.1(a) of the CAT NMS Plan to provide additional clarity regarding the costs to be included in the CAT budget. This proposed provision would list the types of CAT costs to be included in the budget. Specifically, Proposed Section

[23] To the extent that FINRA's equity transaction reporting facilities or the exchanges report transactions in fractional shares in the future, then the calculation of CAT fees would reflect fractional shares as well.

[24] FINRA Trade Reporting FAQ 202.1.

[25] Section 11.1(d) of the CAT NMS Plan.

11.1(a)(i) of the CAT NMS Plan would state that ''[w]ithout limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve, and such other categories as reasonably determined by the Operating Committee to be included in the budget.''

Because technology costs account for more than 90% of CAT costs, CAT LLC proposes to provide more granular information about such costs. Specifically, CAT LLC proposes to require the inclusion of five subcategories of technology costs in the budget: (1) cloud hosting services, (2) operating fees, (3) Customer and Account Information System (''CAIS'') operating fees, (4) change request fees, and (5) capitalized developed technology costs. Breaking out technology costs in this manner is consistent with how such costs are broken out in the CAT budgets available on the CAT website.[26] CAT LLC currently does not propose to require the disclosure of additional subcategories of cost information, such as a further breakdown of the category of cloud hosting services into production costs, including linker costs and storage costs. However, CAT LLC will consider the need to provide additional cost disclosure going forward.

Furthermore, CAT LLC has determined not to provide more detailed subcategories for the other cost categories (that is, legal, consulting, insurance, professional and administration, and public relations costs) at this time. Breaking out these costs into further subcategories would establish new subcategories that are not set forth in the budgets. In addition, these costs in the aggregate represent less than seven percent (7%) of total CAT costs, with professional and administration costs and public relations costs, in particular, each representing less than one percent (1%) of overall CAT costs. Therefore, CAT LLC does not believe that these costs warrant additional subcategory disclosure. CAT LLC further notes that it is not considered a best practice to publicly disclose detailed legal or insurance information, which is particularly sensitive. Nevertheless, CAT LLC notes that the CAT NMS Plan requires that detailed cost information be made available to the Commission upon request, and detailed information on CAT costs and operations is regularly made available to the Commission staff and the Advisory Committee on a confidential basis.

CAT LLC also intends to determine costs for the operating budget for the CAT in a reasonable manner. Accordingly, CAT LLC proposes to amend Section 11.1(a) of the CAT NMS Plan to refer to a ''reasonable'' operating budget for CAT LLC.[27] Specifically, the first sentence of Section 11.1(a) of the CAT NMS Plan would be revised to read: ''On an annual basis the Operating Committee shall approve a reasonable operating budget for the Company.'' In addition, CAT LLC proposes to include the term ''reasonably'' in proposed paragraph (a)(i) of Section 11.1 of the CAT NMS Plan. Specifically, CAT proposes to introduce the term ''reasonably'' to the following proposed provision of the CAT NMS Plan: ''Without limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.''

Finally, CAT LLC proposes to amend Section 11.1(b) of the CAT NMS Plan. Currently, Section 11.1(b) of the CAT NMS Plan states that:

Subject to Section 11.2, the Operating Committee shall have discretion to establish funding for the Company, including: (i) establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by Participants. The Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as ''Consolidated Audit Trail Funding Fees.''

CAT LLC proposes to amend Section 11.1(b) to include a reference to Section 11.1 as well as Section 11.2 in the ''subject to'' clause at the beginning of the provision.[28] CAT LLC believes this reference is relevant because Section 11.1 sets forth requirements related to the budget, and the budget is used in calculating CAT Fees.

b. Reserve

Section 11.1(a) of the CAT NMS Plan states that the budget shall include ''the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.'' In addition, Proposed Section 11.1(a)(i) of the CAT NMS Plan would state that the budgeted CAT costs shall include a reserve. Section 11.1(c) of the CAT NMS Plan states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' CAT LLC proposes to add subparagraph (ii) to Section 11.1(a) of the CAT NMS Plan to provide additional details regarding the size and use of the reserve.

To provide additional clarity regarding the size of the reserve, CAT LLC proposes to add proposed paragraph (ii) to Section 11.1(a) of the CAT NMS Plan to set forth the parameters for the size of the reserve. An analysis of budgeted CAT costs and actual CAT costs for 2020, 2021 and the first nine months of 2022 demonstrates that actual CAT costs were approximately 20% higher than budgeted amounts over this period on a cumulative average basis. Based on the magnitude of historical budget to actual variances as well as the difficulty in accurately predicting various variable CAT costs, CAT LLC believes that a 25% reserve would appear to be reasonable. Accordingly, Proposed Section 11.1(a)(ii) of the CAT NMS Plan would state that ''[f]or the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget.'' CAT LLC also intends to include a reserve in the CAT budget that is reasonably necessary to allow the CAT LLC to maintain a reserve of not more than 25% of the annual budget. Accordingly, CAT LLC proposes to include the term ''reasonably'' in this sentence. Moreover, CAT LLC would calculate the reserve based on the amount of the budget other than the reserve, as the reserve is intended to provide funds for CAT LLC to pay its bills if necessary. Accordingly, Proposed Section 11.1(a)(ii) of the CAT NMS Plan would state that ''[f]or the avoidance of doubt, the calculation of the amount of the reserve would

[26] The CAT LLC budgets are available on the CAT website at *https://www.catnmsplan.com/cat-financial-and-operating-budget.*

[27] As highlighted in *Exhibit B,* this proposed revision of Section 11.1(a) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

[28] As highlighted in *Exhibit B,* this proposed revision to Section 11.1(b) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

exclude the amount of the reserve from the budget.'' [29]

CAT LLC also believes that it is reasonable to base the reserve on a percentage of the budget. First, CAT LLC believes that setting the reserve at 25% of the budget is appropriate in light of the timeline for the collection of CAT fees.[30] Many of CAT LLC's bills must be paid on a monthly basis. However, CAT fees will be collected approximately three months after the activity on which a CAT fee is based—that is, 25% of the year. For example, activity in January would be subject to a bill in February, which would be required to be paid within 30 days,[31] which would be in March. Accordingly, the reserve would be available to address the funding needs related to the delay in CAT LLC's receipt of the CAT fees.

Second, CAT LLC has established a number of measures for establishing a reasonable budget for the CAT, thereby providing a reasonable starting point for the reserve calculation. For example, the CAT NMS Plan would require the budget to be ''reasonable.'' [32] The Fee Rate established at the beginning of the year would be adjusted mid-year to address changes in the actual or budgeted costs or changes in the actual or projected executed equivalent share volume. CAT LLC has established a variety of cost management measures, as discussed in detail in Section A.9.bb of this filing, and has and would provide substantial cost transparency as discussed in detail in Section A.9.l of this filing. The CAT fee filings pursuant to section 19(b) of the Exchange Act would provide a description how the budget is reconciled to the collected fees.

CAT LLC proposes to provide additional clarification regarding the collection of the reserve by providing additional information as to how budget surpluses would be treated for purposes of the reserve. CAT LLC proposes to clarify how CAT fees collected in excess of CAT costs, including the reserve, would be used. Specifically, proposed subparagraph (ii) of Section 11.1(a) of the CAT NMS Plan would state that ''[t]o the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus will be used to offset future fees.'' In addition, CAT LLC further proposes to state in Proposed Section 11.1(a)(ii) of the CAT NMS Plan that ''[f]or the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget).''

The following examples explain the circumstances under which a reserve would be included in the budget:

(1) Suppose that the Operating Committee had approved a budget of $100 million for CAT costs for Year X, and a reserve of $25 million, for a total budget of $125 million for Year X. Suppose that CAT Fees of $125 million were collected during Year X, and that actual CAT costs for Year X were $100 million. Therefore, CAT ended Year X with $25 million in reserve. Suppose further that the Operating Committee had approved a budget of $100 million for CAT costs and a reserve of $25 million, for a total budget of $125 million for Year X+1. Because CAT LLC had collected $25 million in excess of costs for the reserve in Year X, and the excess was not necessary to cover additional costs in Year X, CAT LLC would not include any additional amount in the budget for a reserve for Year X+1. CAT LLC would use the excess fees collected for the reserve.

(2) Suppose that the Operating Committee had approved a budget of $100 million for CAT costs for Year Y, and a reserve of $25 million, for a total budget of $125 million for Year Y. Suppose that CAT Fees of $110 million were collected during Year Y, and that actual CAT costs for Year Y were $100 million. Therefore, CAT ended Year Y with $10 million in reserve. Suppose further that the Operating Committee had approved a budget of $100 million for CAT costs, and a reserve of $25 million, for a total budget of $125 million for Year Y+1. Because CAT LLC had collected $10 million in excess of costs for the reserve in Year Y, and the entire reserve was not necessary to cover additional costs in Year Y, CAT LLC would only need to collect an additional $15 million for the reserve in Year Y+1, not $25 million.

c. Publicly Available Budgets

CAT LLC publicly provides the annual operating budget for the Company as well as updates to the budget that occur during the year.[33] This publicly available budget information describes in detail the budget for the Company. For example, among other things, the budget provides specific budgeted technology costs (including cloud hosting services, operating fees, CAIS operating fees and change request fees) and general and administrative costs (including legal, consulting, insurance, professional and administration, and public relations). The Company provides such budget information on a dedicated web page on the CAT NMS Plan website to make it readily accessible to CAT Reporters and others.

3. CAT Fees Related to Prospective CAT Costs

CAT LLC proposes to describe CAT Fees related to Prospective CAT Costs in Section 11.3(a) of the CAT NMS Plan. Proposed Section 11.3(a) of the CAT NMS Plan would describe that the CAT Fees related to Prospective CAT Costs apply to both Participants and Industry Members, the manner of calculating the Fee Rate for CAT Fees, the description of the calculation of the Participant CAT Fees, a description of the calculation of the Industry Member CAT Fees, a description of the fee filings under section 19(b) of the Exchange Act for Industry Member CAT Fees, and details regarding the calculation of the CAT Fees that are available upon request or publicly available. The following describes Proposed Section 11.3(a) of the CAT NMS Plan in detail.

a. Introductory Statement

CAT LLC proposes to revise Section 11.3(a) of the CAT NMS Plan to address CAT Fees related to Prospective CAT Costs for both Participants and Industry Members. Accordingly, CAT LLC proposes to revise the introductory statement in Proposed Section 11.3(a) of the CAT NMS Plan to state that ''[t]he Operating Committee will establish fees (''CAT Fees) to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants (''Prospective CAT Costs'') as follows:''.

b. Fee Rate for CAT Fees

CAT LLC proposes to describe the timing and method for calculating the Fee Rate for the CAT Fees related to Prospective CAT Costs in Proposed

[29] As highlighted in *Exhibit B,* this proposed revision to Section 11.1(a)(ii) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

[30] For a discussion of the billing and collection of CAT fees, *see* Section A.7 of this filing.

[31] *See* Sections 3.7(b) and 11.4 of the CAT NMS Plan.

[32] *See* Proposed Section 11.1(a) of the CAT NMS Plan.

[33] To address potential changes related to the CAT during the year, the Operating Committee may adjust the budgeted CAT costs for the year as it reasonably deems appropriate for the prudent operation of the Company. For example, the Operating Committee may determine that an adjustment to the budget is necessary if actual costs during the year are more or less than the budget, or if unanticipated expenditures are necessary. To the extent that the Operating Committee adjusts the budgeted CAT costs during the year and determines to adjust the Fee Rate, the adjusted budgeted CAT costs would be used in calculating the new Fee Rate for the remaining months of the year.

Section 11.3(a)(i) of the CAT NMS Plan, and to provide additional detail regarding the Fee Rate in that provision. Proposed Section 11.3(a)(i) of the CAT NMS Plan would state that CAT Fees related to Prospective CAT Costs would be calculated twice a year. Specifically, this proposed provision would state that ''[t]he Operating Committee will calculate the Fee Rate for the CAT Fee twice per year, once at the beginning of the year and once during the year as follows.'' CAT LLC recognizes the need to align CAT Fees with CAT costs. Requiring the adjustment of the Fee Rate both at the beginning of the year and once mid-year in response to changes in the budgeted or actual costs or projected or actual total executed equivalent share volume during the year would likely lead to the greater alignment of CAT Fees and CAT costs, thereby potentially avoiding the collection of CAT Fees in excess of CAT costs or CAT Fees that are insufficient to cover CAT costs. Accordingly, CAT LLC proposes to require both an annual and a mid-year adjustment of the Fee Rate for the CAT Fee.

i. General

CAT LLC proposes to provide details regarding the calculation of the Fee Rate for the CAT Fees in Proposed Section 11.3(a)(i) of the CAT NMS Plan. The detail provided in Proposed Section 11.3(a)(i) of the CAT NMS Plan would include a description of the calculation of the Fee Rate at the beginning of the year and during the year, the counting method for executed equivalent shares, the budgeted CAT costs, and the projected total executed equivalent share volume of transactions in Eligible Securities for the relevant period. Each of these aspects of the CAT Fees are discussed in more detail below.

A. Annual Calculation of Fee Rate

Proposed Section 11.3(a)(i)(A)(I) of the CAT NMS Plan would describe the annual calculation of the Fee Rate and the requirement for Participants to file a fee filing for CAT Fees to be charged Industry Members calculated using the Fee Rate. This proposed provision also would state that Participants and Industry Members would be required to pay such CAT Fees once the CAT Fees are in effect with regard to Industry Members. Specifically, this proposed provision would state:

> For the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the reasonably budgeted CAT costs for the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with section 19(b) of the Exchange Act.

CAT LLC proposes to clarify that the annual calculation of CAT Fees would be performed using reasonably budgeted CAT costs and reasonably projected total executed equivalent share volume.[34] Accordingly, CAT LLC proposes to use the term ''reasonably'' twice in the following sentence: ''For the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the reasonably budgeted CAT costs for the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year.''

B. Mid-Year Calculation of Fee Rate

Proposed Section 11.3(a)(i)(A)(II) of the CAT NMS Plan describes the mandatory mid-year calculation of a new Fee Rate. This proposed provision would describe the mid-year calculation of the Fee Rate and the requirement for Participants to file a fee filing for CAT Fees to be charged Industry Members calculated using the Fee Rate. This proposed provision also would state that Participants and Industry Members would be required to pay such CAT Fees once the CAT Fees are in effect with regard to Industry Members. Specifically, this proposed provision would state:

> During each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year. Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the SEC pursuant to section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the new Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with section 19(b) of the Exchange Act.

CAT LLC proposes to clarify that CAT Fees would be calculated during the year using reasonably budgeted CAT costs and reasonably projected total executed equivalent share volume.[35] Accordingly, CAT LLC proposes to use the term ''reasonably'' twice in the following sentence: ''During each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year.''

C. Continuing CAT Fee

CAT LLC also proposes to add Section 11.3(a)(i)(A)(III) to the CAT NMS Plan to clarify that CAT Fees related to Prospective CAT Costs do not sunset automatically; such CAT Fees would remain in place until new CAT Fees are in place with a new Fee Rate. The Funding Proposal is designed to collect CAT fees continuously so as to provide uninterrupted revenue to pay CAT bills. Specifically, this proposed provision would state:

> For the avoidance of doubt, CAT Fees with a Fee Rate calculated as set forth in this paragraph (a)(i) shall remain in effect until the Operating Committee approves a new Fee Rate as described in this paragraph (a)(i) and CAT Fees with the new Fee Rate are in effect with regard to Industry Members in accordance with section 19(b) of the Exchange Act.

D. Commencement of CAT Fee

CAT LLC believes that it would be appropriate to commence the first CAT Fee either at the beginning of the year or during the year (due to, for example, mid-year approval of the CAT Fee by the SEC), whichever is closest to the time that such a CAT Fee could become effective, so as to seek prompt recovery of CAT costs. If the CAT Fee were to commence during the year, the first CAT Fee would be calculated in the same way that a mid-year CAT Fee would be calculated. To clarify this approach, CAT LLC proposes to add Proposed Section 11.3(a)(i)(A)(IV) to the CAT NMS Plan. This provision would state that ''[f]or the avoidance of doubt, the first CAT Fee may commence at the beginning of the year or during the year. If it were to commence during the year, the CAT Fee would be calculated as described in paragraph (II) of this Section.''

[34] As highlighted in *Exhibit B,* this proposed revision to add the term ''reasonably'' before ''projected total executed equivalent share volume'' in Proposed Section 11.3(a)(i)(A)(I) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

[35] As highlighted in *Exhibit B,* this proposed revision to add the term ''reasonably'' before ''projected total executed equivalent share volume'' in Proposed Section 11.3(a)(i)(A)(II) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

ii. Executed Equivalent Shares

CAT LLC proposes to describe in Proposed Section 11.3(a)(i)(B) of the CAT NMS Plan how executed equivalent shares would be counted for purposes of calculating CAT Fees. Under the Funding Proposal, a CAT Fee would be charged with regard to each transaction in Eligible Securities as reported in CAT Data. As set forth in Section 1.1 of the CAT NMS Plan, ''Eligible Securities'' are defined to include all NMS Securities and all OTC Equity Securities. Section 1.1 of the CAT NMS Plan, in turn, defines an ''NMS Security'' as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options.'' In addition, Section 1.1 of the CAT NMS Plan defines an ''OTC Equity Security'' as ''any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities.'' A CAT Fee would be imposed with regard to transactions in Eligible Securities in the CAT Data regardless of whether the trade is executed on an exchange or otherwise than on an exchange.

The Funding Proposal uses the concept of executed equivalent shares as the transactions subject to a CAT Fee involve NMS Stocks, Listed Options and OTC Equity Securities, each of which have different trading characteristics.

NMS Stocks. Under the Funding Proposal, each executed share for a transaction in NMS Stocks would be counted as one executed equivalent share. Accordingly, Proposed Section 11.3(a)(i)(B)(I) of the CAT NMS Plan would state that ''[f]or purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: (I) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share.''

Listed Options. Recognizing that Listed Options trade in contracts rather than shares, each executed contract for a transaction in Listed Options will be counted using the contract multiplier applicable to the specific Listed Option in the relevant transaction. Typically, a Listed Option contract represents 100 shares; however, it may also represent another designated number of shares. Accordingly, Proposed Section 11.3(a)(i)(B)(II) of the CAT NMS Plan would state that ''[f]or purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: . . . (II) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (*i.e.,* 100 executed equivalent shares or such other applicable multiplier).''

OTC Equity Securities. Similarly, in recognition of the different trading characteristics of OTC Equity Securities as compared to NMS Stocks, the Funding Proposal would discount the share volume of OTC Equity Securities when calculating CAT Fees. Many OTC Equity Securities are priced at less than one dollar—and a significant number are priced at less than one penny—per share and low-priced shares tend to trade in larger quantities. Accordingly, a disproportionately large number of shares are involved in transactions involving OTC Equity Securities versus NMS Stocks.[36] Because the Funding Proposal would calculate CAT Fees based on executed share volume, CAT Reporters trading OTC Equity Securities would likely be subject to higher fees than their market activity may warrant. To address this potential concern, the Funding Proposal would count each executed share for a transaction in OTC Equity Securities as 0.01 executed equivalent shares. Accordingly, Proposed Section 11.3(a)(i)(B)(III) of the CAT NMS Plan would state that ''[f]or purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows: . . . (III) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.''

The discount to 1% was selected based on a reasoned analysis of a variety of different metrics for comparing the markets for OTC Equity Securities and NMS Stocks, rather than a simple calculation. For example, using 2021 data, the Operating Committee calculated the following metrics: (1) the ratio of total notional dollar value traded for OTC Equity Securities to OTC Equity Securities and NMS Stocks was 0.051%; (2) the ratio of total trades in OTC Equity Securities to total trades in OTC Equity Securities and NMS Stocks was 0.90%; and (3) the ratio of average share price per trade of OTC Equity Securities to average share price per trade for OTC Equity Securities and NMS Stocks was 0.065%. In recognition of the fact that these calculations involve averages and for ease of application, the Operating Committee determined to round these metrics to 1%.

In calculating CAT Fees, CAT LLC intends for executed equivalent shares in a transaction in Eligible Securities to be reasonably counted. Accordingly, CAT LLC proposes to include the term ''reasonably'' in the following sentence in Proposed Section 11.3(a)(i)(B) of the CAT NMS Plan: ''For purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows:''.

iii. Budgeted CAT Costs

The calculation of the Fee Rate for CAT Fees related to Prospective CAT Costs requires the determination of the budgeted CAT costs for the year or other relevant period. Proposed Section 11.3(a)(i)(C) of the CAT NMS Plan would describe the budgeted CAT costs for calculating CAT Fees. It would state the following:

> The budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

As discussed above, CAT LLC also proposes to provide additional details regarding what is included in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan in proposed paragraphs (i) and (ii) of Section 11.1(a) of the CAT NMS Plan.

Moreover, CAT LLC proposes to clarify that CAT Fees must be calculated using reasonably budgeted CAT costs.[37] Accordingly, CAT proposes to include the terms ''reasonably'' and ''reasonable'' the following sentence: ''The budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and

[36] For example, based on data from 2021, (1) the average price per executed share of OTC Equity Securities was $0.072 and the average price per executed share for NMS Stocks was $49.51; and (2) the average trade size for OTC Equity Securities was 63,474 and the average trade size for NMS Stocks was 166 shares. Trades in OTC Equity Securities accounted for 77% of the number of all equity shares traded, but only 0.51% of the notional value of all equity shares traded.

[37] As highlighted in *Exhibit B,* this proposed revision to add the term ''reasonable'' before ''fees, cost and expenses'' in Proposed Section 11.3(a)(i)(C) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.''

iv. Projected Total Executed Equivalent Share Volume

The calculation of the Fee Rate for CAT Fees also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for each relevant period. Each year, the Operating Committee would determine this projection based on the total executed equivalent share volume of transactions in Eligible Securities from the prior twelve months. Therefore, Proposed Section 11.3(a)(i)(D) of the CAT NMS Plan would state that ''[t]he Operating Committee shall reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' CAT LLC determined that the use of the data from the prior twelve months provides an appropriate balance between using data from a period that is sufficiently long to avoid short term fluctuations while providing data close in time to the upcoming relevant period. In addition, CAT LLC proposes to allow the Operating Committee to base its projection on the prior twelve months, but to use it discretion to analyze the likely volume for the upcoming year. As set forth in Proposed Section 11.3(a)(iii)(B), Participants will be required to provide a description of the calculation of the projection in their fee filings pursuant to section 19(b) of the Exchange Act. Furthermore, CAT LLC intends to calculate the CAT Fees based on a reasonable determination of the projected total executed equivalent share volume of transactions in Eligible Securities. Accordingly, CAT LLC propose to include the term ''reasonably'' in the Proposed Section 11.3(a)(i)(D) of the CAT NMS Plan to indicate that the Operating Committee will ''reasonably determine the projected total executed equivalent share volume.''

c. Participant CAT Fees for Prospective CAT Costs

CAT LLC proposes to describe the Participant CAT Fees related to Prospective CAT Costs in Proposed Section 11.3(a)(ii) of the CAT NMS Plan. Proposed Section 11.3(a)(ii) of the CAT NMS Plan would have two paragraphs (A) and (B), where paragraph (A) would describe the CAT Fee obligation for Participants and paragraph (B) would clarify that Participants would only be required to pay CAT Fees when Industry Members are required to pay CAT Fees.

i. CAT Fee Obligation of the Participants

CAT LLC proposes to add paragraph (A) to Proposed Section 11.3(a)(ii) of the CAT NMS Plan to describe the CAT Fee obligation of the Participants. Specifically, proposed paragraph (A) of Proposed Section 11.3(a)(ii) of the CAT NMS Plan would state the following:

> Each Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data. The CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate determined pursuant to paragraph (a)(i) of this Section 11.3.

CAT LLC intends for the Participant CAT Fee to be calculated using the Fee Rate reasonably determined pursuant to Proposed Section 11.3(a)(i) of the CAT NMS Plan. Accordingly, CAT LLC proposes to include the term ''reasonably'' in the following sentence: ''[t]he CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.''

ii. Effectiveness of Participant CAT Fees

CAT LLC also proposes to include proposed paragraph (B) of Proposed Section 11.3(a)(ii) of the CAT NMS Plan to clarify that Participants would only be required to pay CAT Fees when Industry Members are required to pay CAT Fees. Under the Funding Proposal, CAT Fees are designed to cover 100% of CAT costs by allocating costs between and among Participants and Industry Members. However, the CAT Fees charged to Participants are implemented via a different process than CAT Fees charged to Industry Members. CAT Fees charged to Participants are implemented via an approval of the CAT Fees by the Operating Committee in accordance with the requirements of the CAT NMS Plan. In contrast, CAT Fees charged to Industry Members may only become effective in accordance with the requirements of section 19(b) of the Exchange Act. Accordingly, proposed paragraph (B) of Proposed Section 11.3(a)(ii) of the CAT NMS Plan would state that ''[e]ach Participant will be required to pay the CAT Fee calculated using the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3 and approved by the Operating Committee only if such CAT Fees are in effect with regard to Industry Members in accordance with section 19(b) of the Exchange Act.'' CAT LLC intends for the Participant CAT Fee to be calculated using the Fee Rate reasonably determined pursuant to Proposed Section 11.3(a)(i) of the CAT NMS Plan. Accordingly, CAT LLC proposes to include the term ''reasonably'' in the phrase ''the Fee Rate reasonably determined'' in this provision.

d. Industry Member CAT Fees for Prospective CAT Costs

CAT LLC proposes to describe the Industry Member CAT Fees related to Prospective CAT Costs in Proposed Section 11.3(a)(iii) of the CAT NMS Plan. Proposed Section 11.3(a)(iii) of the CAT NMS Plan would have three paragraphs, (A), (B) and (C), where paragraph (A) would describe the CAT Fee obligation for Industry Members, paragraph (B) would described the required content of the fee filings required to be filed pursuant to section 19(b) of the Exchange Act regarding the CAT Fees for Industry Members, and paragraph (C) would clarify that Participants would not make CAT fee filings regarding CAT Fees until the Financial Accountability Milestone related to Period 4 as described in Section 11.6 of the CAT NMS Plan has been satisfied.

i. Industry Member CAT Fee Obligation

CAT LLC proposes to describe the CAT Fees related to Prospective CAT Costs that would be charged to Industry Members in Proposed Section 11.3(a)(iii)(A) of the CAT NMS Plan. Accordingly, Proposed Section 11.3(a)(iii)(A) of the CAT NMS Plan would state the following:

> Each Industry Member that is the CAT Executing broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction

by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.

CAT LLC intends for the Participant CAT Fee to be calculated using the Fee Rate reasonably determined pursuant to Proposed Section 11.3(a)(i) of the CAT NMS Plan. Accordingly, CAT LLC proposes to include the phrase ''the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3'' in this provision.

ii. Fee Filings Under Section 19(b) of the Exchange Act for Industry Member CAT Fees

CAT LLC proposes to describe the information that Participants would be required to include in their fee filings to be made pursuant to section 19(b) of the Exchange and Rule 19b–4 thereunder for Industry Member CAT Fees in proposed paragraph (B) of Proposed Section 11.3(a)(iii) of the CAT NMS Plan.[38] Specifically, such filings would be required to include with regard to the CAT Fee: (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget and the reason for changes in each such line item from the prior CAT Fee filing; [39] (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection. This detail would describe how the Fee Rate is calculated, and explain how the budget used in the calculation is reconciled to the collected fees. Such detailed information would provide Industry Members and other interested parties with a clear understanding of the calculation of the CAT Fees and their relationship to CAT costs.[40]

In addition, CAT LLC proposes to clarify that the budgeted CAT costs described in the fee filings must provide sufficient detail to demonstrate that the CAT budget used in calculating the CAT Fees is reasonable and appropriate. Therefore, CAT LLC proposes to add the following sentence to Proposed Section 11.3(a)(iii)(B) of the CAT NMS Plan: ''The information provided in this Section would be provided with sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.''

iii. Financial Accountability Milestone

CAT LLC recognizes that the collection of CAT Fees from Industry Members is subject to Section 11.6 of the CAT NMS Plan regarding the Financial Accountability Milestones. Accordingly, CAT LLC proposes to clarify that Participants will not make fee filings pursuant to Section 19(b) of the Exchange Act regarding CAT Fees until the Financial Accountability Milestone related to Period 4 described in Section 11.6 of the CAT NMS Plan has been satisfied. Specifically, CAT LLC proposes to add proposed paragraph (C) to Proposed Section 11.3(a)(iii) to the CAT NMS Plan to address the Financial Accountability Milestone. This provision would state that ''[n]o Participant will make a filing with the SEC pursuant to section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.''

e. CAT Fee Details

CAT LLC proposes to provide Participants and CAT Executing Brokers with details regarding the calculation of their CAT Fees upon request. Specifically, CAT LLC proposes to add Proposed Section 11.3(a)(iv)(A) to the CAT NMS Plan to describe this disclosure. This provision would state that ''[d]etails regarding the calculation of a Participant or CAT Executing Brokers' CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [41] Such information would provide Participants and CAT Executing Brokers with the ability to understand the details regarding the calculation of their CAT Fees.

In addition, CAT LLC proposes to make certain aggregate statistics regarding the CAT Fees publicly available. Specifically, CAT LLC proposes to add Proposed Section 11.3(a)(iv)(B) to the CAT NMS Plan to describe this public disclosure. This provision would state that ''[f]or each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.'' [42]

4. Historical CAT Assessment

CAT LLC proposes to describe Historical CAT Assessments related to Historical CAT Costs in Proposed Section 11.3(b) of the CAT NMS Plan. Proposed Section 11.3(b) of the CAT NMS Plan would describe that Historical CAT Assessments apply only to Industry Members (not to Participants), the manner of calculating the Historical Fee Rate for the Historical CAT Assessment, a description of the calculation of the Industry Member CAT Fees, a description of the fee filings under section 19(b) of the Exchange Act for Historical CAT Assessments, and details regarding the calculation of the Historical CAT Assessments that are available upon request or publicly available. The following describes in detail Section 11.3(b) of the CAT NMS Plan.

a. Introductory Statement

CAT LLC proposes to revise Section 11.3(b) of the CAT NMS Plan to address Historical CAT Assessments related to Historical CAT Costs to be charged to Industry Members. Accordingly, CAT LLC proposes to revise the introductory

[38] CAT LLC expects the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act with regard to CAT Fees to be filed pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b–(f)(2) thereunder. In accordance with Section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(f)(2) thereunder, such fee filings would be effective upon filing.

[39] CAT LLC intends to include any other categories as reasonably determined by the Operation Committee. Accordingly, this provision refers to ''such other categories as reasonably determined by the Operating Committee to be included in the budget.''

[40] As a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the CAT Fees, by multiplying the Fee Rate by one-third and describing the relevant number of decimal places for the fee.

[41] As highlighted in *Exhibit B,* this second sentence in Proposed Section 11.3(a)(iv)(A) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

[42] As highlighted in *Exhibit B,* Proposed Section 11.3(a)(iv)(B) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

statement in Proposed Section 11.3(b) of the CAT NMS Plan to state that ''[t]he Operating Committee will establish one or more fees (each a ''Historical CAT Assessment'') to be payable by Industry Members with regard to CAT costs previously paid by the Participants (''Past CAT Costs'') as follows:''.[43] With the reference to ''one or more'' Historical CAT Fees, this provision also clarifies that there may be one or more Historical CAT Assessments.

b. Calculation of Historical Fee Rate

CAT LLC proposes to provide details regarding the calculation of the Historical CAT Assessment in Proposed Section 11.3(b)(i) of the CAT NMS Plan. These details would include a description of the calculation of the Historical Fee Rate, the counting method for executed equivalent shares, the Historical CAT Costs, the Historical Recovery Period, and the projected total executed equivalent share volume of transactions in Eligible Securities for the Historical Recovery Period.

i. General

Proposed paragraph (a) of Proposed Section 11.3(b)(i) of the CAT NMS Plan would describe the calculation of the Historical Fee Rate for each Historical CAT Assessment and the requirement for Participants to file a fee filing for each Historical CAT Assessment. This proposed provision also would state that Industry Members would be required to pay each Historical CAT Assessment once such Historical CAT Assessment is in effect in accordance with section 19(b) of the Exchange Act. Specifically, this proposed provision would state that:

The Operating Committee will calculate the Historical Fee Rate for each Historical CAT Assessment by dividing the Historical CAT Costs for each Historical CAT Assessment by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period for each Historical CAT Assessment. Once the Operating Committee has approved such Historical Fee Rate, the Participants shall be required to file with the SEC pursuant to section 19(b) of the Exchange Act such Historical CAT Assessment to be charged Industry Members calculated using such Historical Fee Rate. Industry Members will be required to pay such Historical CAT Assessment calculated using such Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with section 19(b) of the Exchange Act.

CAT LLC proposes to clarify that the calculation of each Historical Fee Rate would be performed using reasonably projected total executed equivalent share volume.[44] Accordingly, CAT LLC proposes to use the term ''reasonably'' to the describe ''projected total executed equivalent share volume'' in this provision.

ii. Executed Equivalent Shares

The Historical CAT Assessment would be calculated based on the same executed equivalent share calculation as CAT Fees related to Prospective CAT Costs. Accordingly, Proposed Section 11.3(b)(i)(B) of the CAT NMS Plan would make it clear that the calculation is the same for both types of fees. Specifically, Proposed Section 11.3(b)(i)(B) of the CAT NMS Plan would state that ''[f]or purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted in the same manner as set forth in paragraph (a)(i)(B) of this Section 11.3.''

iii. Historical CAT Costs

The calculation of the Historical CAT Assessment depends upon the determination of the Historical CAT Costs. Proposed Section 11.3(b)(i)(C) of the CAT NMS Plan would describe the Historical CAT Costs for calculating Historical CAT Assessments. The Operating Committee will reasonably determine the Past CAT Costs sought to be recovered through the Historical CAT Assessment. CAT LLC proposes to make this approach clear in the language of the CAT NMS Plan by adding Proposed Section 11.3(b)(i)(C) of the CAT NMS Plan, which would state that ''[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee.''[45]

CAT LLC proposes to further clarify the amount to be collected via the Historical CAT Assessments in Proposed Section 11.3(b)(i)(C) of the CAT NMS Plan. Specifically, CAT LLC proposes to add the clarifying statement that ''[e]ach Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.'' This statement reiterates the requirement set forth in Proposed Section 11.3(b)(iii)(A) of the CAT NMS Plan regarding the calculation of the Historical CAT Assessment, which requires the multiplication of the number of executed equivalent shares in the transaction by *one-third* and by the Historical Fee Rate. Each CEBS and CEBB pays one-third, and, therefore, two-thirds of the Historical CAT Costs would be collected from CAT Executing Brokers.

CAT LLC also proposes to add the term ''reasonably'' to the following sentence in Section 11.1(c) of the CAT NMS Plan before the word ''incurred'': ''In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees) *reasonably* incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.''[46] The addition of the term ''reasonably'' would require such fees, costs and expenses to be reasonable.

iv. Historical Recovery Period

The calculation of the Historical CAT Assessment also depends upon the determination of the Historical Recovery Period. As the total amount of the Historical CAT Costs have not yet been determined because the CAT fee model has not yet been approved and CAT LLC continues to incur costs, CAT LLC has not determined the specific recovery period for any particular Historical CAT Assessment. Based on CAT costs incurred to date, however, CAT LLC believes that the Historical Recovery Period should not be less than 24 months or more than five years. In analyzing the potential Historical Recovery Periods, CAT LLC sought to weigh the need for a reasonable Historical Fee Rate that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loan notes to the Participants in a timely fashion. CAT LLC analyzed potential recovery periods using the Historical CAT Costs through 2022 and the total executed equivalent

[43] Note that there may be one or more Historical CAT Assessments, depending upon the timing of any approval of the amendment to the CAT NMS Plan and the completion of the Financial Accountability Milestones. For a discussion of the Financial Accountability Milestones, *see* Section 11.6 of the CAT NMS Plan.

[44] As highlighted in *Exhibit B,* this proposed revision to add the term ''reasonably'' before ''projected total executed equivalent share volume'' in Proposed Section 11.3(b)(i)(A) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

[45] As highlighted in *Exhibit B,* this proposed revision to add the term ''reasonably'' before ''excluded'' in Proposed Section 11.3(b)(i)(C) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

[46] As highlighted in *Exhibit B,* this proposed revision to Section 11.1(c) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

share volume of transactions in Eligible Securities for 2021 to calculate the projected total executed equivalent share volume of transactions. Based on the variables in this analysis, CAT LLC determined that the Historical Fee Rate calculated using a Historical Recovery Period of two to five years would establish a reasonable Historical Fee Rate even if Industry Members were required to pay a Historical CAT Assessment and the ongoing CAT Fee at the same time. CAT LLC notes, however, that the actual Historical CAT Assessment would be calculated using up-to-date Historical CAT Costs and executed equivalent share volume.

Proposed Section 11.3(b)(i)(D)(I) of the CAT NMS Plan would describe the Historical Recovery Period used in calculating the Historical Fee Rate. This proposed provision would state that ''[t]he length of the Historical Recovery Period used in calculating each Historical Fee Rate will be reasonably established by the Operating Committee based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment.'' [47] This proposed provision, however, would state that ''no Historical Recovery Period used in calculating the Historical Fee Rate shall be less than 24 months or more than five years.'' As discussed below, the Historical Recovery Period is used to calculate the Historical Fee Rate. The actual recovery period may be longer or shorter than the Historical Recovery Period depending on the actual executed equivalent share volumes during the time that the Historical CAT Assessment is in effect. Any Historical CAT Assessment would remain in effect until the relevant Historical CAT Costs are recovered, whether that time is shorter or longer than the Historical Recovery Period used in calculating the Historical Fee Rate.

Proposed Section 11.3(b)(i)(D)(II) of the CAT NMS Plan would describe the length of the time that the Historical CAT Assessment would be in effect, which may be greater than or less than the Historical Recovery Period, depending on the amount of the Historical CAT Assessments collected based on the actual volume during the time that the Historical Assessment is in effect. Any Historical CAT Assessment would remain in effect until the relevant Historical CAT Costs are collected, whether that time is shorter or longer than the Historical Recovery Period used in calculating the Historical Fee Rate. Accordingly, this provision states that ''[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected.''

v. Projected Total Executed Equivalent Share Volume

The Historical Fee Rate for a Historical CAT Assessment would be calculated by using the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period for such Historical CAT Assessment. CAT LLC proposes to clarify the manner of calculating the projected total executed equivalent share volume for each Historical CAT Assessment in Proposed Section 11.3(b)(i)(E) to the CAT NMS Plan. CAT LLC proposes to state in this provision that the projection will be determined based on transactions in Eligible Securities for the prior twelve months. Accordingly, Proposed Section 11.3(b)(i)(E) of the CAT NMS Plan would state that ''[t]he Operating Committee shall reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.'' As with the calculation of the projections for CAT Fees, CAT LLC determined that the use of the data from the prior twelve months provides an appropriate balance between using data from a period that is sufficiently long to avoid short term fluctuations while providing data close in time to the upcoming relevant period. In addition, CAT LLC proposes to allow the Operating Committee to base its projection on the prior twelve months, but to use its discretion to analyze the likely volume for the upcoming year. As set forth in Proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan, Participants will be required to provide a description of the calculation of the projection in their fee filings pursuant to section 19(b) of the Exchange Act for Historical CAT Assessments. As noted, this provision would require the Operating Committee to ''reasonably'' determine the projected total executed equivalent share volume.

c. Past CAT Costs and Participants

Proposed Section 11.3(b)(ii) of the CAT NMS Plan would clarify that the Participants would not be required to pay the Historical CAT Assessment as the Participants previously have paid all Past CAT Costs. It would state that, ''[b]ecause Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment.'' In addition, Proposed Section 11.3(b)(ii) of the CAT NMS Plan would clarify that the Historical CAT fees collected from Industry Members would be allocated to Participants for repayment of the outstanding loan notes of the Participants to the Company on a pro rata basis; such fees would not be allocated to Participants based on the executed equivalent share volume of transactions in Eligible Securities. Specifically, Proposed Section 11.3(b)(ii) of the CAT NMS Plan would state that ''[i]n lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.'' Furthermore, Proposed Section 11.3(b)(ii) of the CAT NMS Plan would emphasize that ''[t]he Historical CAT Assessment is designed to recover two-thirds of the Historical CAT Costs.'' [48]

d. Historical CAT Assessment for Industry Members

CAT LLC proposes to describe the Historical CAT Assessment for Industry Members in Proposed Section 11.3(b)(iii) of the CAT NMS Plan. Proposed Section 11.3(b)(iii) of the CAT NMS Plan would have two paragraphs, (A) and (B), where paragraph (A) would describe the Historical CAT Assessment for Industry Member, and paragraph (B) would describe the fee filings required to be filed pursuant to section 19(b) of the Exchange Act regarding the Historical CAT Assessments.

[47] This provision would require that the Historical Recovery Period be ''reasonably'' established by the Operating Committee.

[48] As highlighted in *Exhibit B,* the sentence ''In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans'' has been revised from the 2022 Funding Proposal. CAT LLC proposes to revise the phrase ''cancellation of the loans made by the Company'' to ''cancellation of the loans made to the Company'' as the loans were made to the Company, not by the Company. In addition, CAT LLC proposes to revise the sentence to clarify that Participants will remain responsible via the loan cancellations for one-third of Historical CAT Costs as well as 100% of certain other Past CAT Costs (*e.g.,* the Excluded Costs discussed below).

i. Industry Member Obligation for Historical CAT Assessment

CAT LLC proposes to describe the Historical CAT Assessment charged to Industry Members in Proposed Section 11.3(b)(iii)(A) of the CAT NMS Plan. Specifically, this proposed paragraph would state that:

> Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.

As noted, this provision would require the Operating Committee to ''reasonably'' determine the Historical Fee Rate pursuant to Proposed Section 11.3(b)(i) of the CAT NMS Plan.

ii. Historical CAT Assessment Fee Filings

CAT LLC proposes to provide additional details regarding the fee filings to be filed by the Participants regarding each Historical CAT Assessment pursuant to section 19(b) of the Exchange Act in Proposed Section 11.3(b)(iii)(B) of the CAT NMS Plan.[49] Specifically, this provision would describe that fee filings would be required for each Historical CAT Assessment, the content of such fee filings, and the effect of the Financial Accountability Milestones described in Section 11.6 of the CAT NMS Plan on the fee filings.

A. Number of Fee Filings for Historical CAT Assessments

CAT LLC proposes to clarify how many fee filings pursuant to section 19(b) of the Exchange Act Participants would be required to make with regard to Historical CAT Assessments. CAT LLC proposes to clarify that each Participant will be required to file a fee filing pursuant to section 19(b) of the Exchange Act to describe each Historical CAT Assessment. Accordingly, CAT LLC proposes to describe this requirement in Proposed Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan, which would state that ''Participants will be required to file with the SEC pursuant to section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.''

B. Content of Fee Filings for Historical CAT Assessments

CAT LLC proposes to provide additional detail as to the information that Participants would be required to include in their fee filings to be made pursuant to section 19(b) of the Exchange and Rule 19b–4(f)(2) for Historical CAT Assessments in proposed paragraph (b)(iii)(B)(II) of Proposed Section 11.3 of the CAT NMS Plan. The proposed paragraph sets forth the information about the Historical CAT Assessments that should be included in the fee filings required to be made by the Participants pursuant to section 19(b) of the Exchange Act. Specifically, such filings would be required to include: (A) the Historical Fee Rate; (B) a brief description of the amount and type of Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection. Such detailed information would provide Industry Members and other interested parties with a clear understanding of the calculation of each Historical CAT Assessment and its relationship to Historical CAT Costs.[50]

In addition, CAT LLC proposes to clarify that the Historical CAT Costs described in the fee filings must provide sufficient detail to demonstrate that such costs are reasonable and appropriate. Therefore, CAT LLC proposes to add the following sentence to Proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan: ''The information provided in this Section would be provided with sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.''

C. Financial Accountability Milestones

CAT LLC recognizes that the collection of Historical CAT Assessments from Industry Members is subject to Section 11.6 of the CAT NMS Plan regarding the Financial Accountability Milestones. Accordingly, CAT LLC proposes to clarify that Participants will not make CAT fee filings pursuant to section 19(b) of the Exchange Act regarding a Historical CAT Assessment until any applicable Financial Accountability Milestone has been satisfied. Specifically, CAT LLC proposes to add Proposed Section 11.3(b)(iii)(B)(III) to the CAT NMS Plan. This provision would state that ''[n]o Participant will make a filing with the SEC pursuant to section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.''

e. Historical CAT Assessment Details

CAT LLC proposes to provide CAT Executing Brokers with details regarding the calculation of their Historical CAT Assessments upon request. Specifically, CAT LLC proposes to add Proposed Section 11.3(b)(iv)(A) to the CAT NMS Plan, which would state that ''[d]etails regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.''[51] Such information would provide CAT Executing Brokers with the ability to understand the details regarding the calculation of their Historical CAT Assessments.

In addition, CAT LLC proposes to make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, CAT LLC proposes to add Proposed Section 11.3(b)(iv)(B) to the CAT NMS Plan. This provision would state that ''[f]or each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side

[49] CAT LLC expects the fee filings required to be made by the Participants pursuant to Section 19(b) of the Exchange Act with regard to Historical CAT Assessments to be filed pursuant to Section 19(b)(3)(A) of the Exchange Act. In accordance with Section 19(b)(3)(A) of the Exchange Act, fee filings made pursuant to Section 19(b)(3)(A) of the Exchange Act would be effective upon filing.

[50] As a practical matter, the fee filing would provide the exact fee per executed equivalent share to be paid for the Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee.

[51] As highlighted in *Exhibit B,* the second sentence of Proposed Section 11.3(b)(iv)(A) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

transactions and sell-side transactions.'' [52]

5. CAT Fee Schedule for Participants

To implement the Participant CAT fees, CAT LLC proposes to add a fee schedule, entitled ''Consolidated Audit Trail Funding Fees,'' to Appendix B of the CAT NMS Plan. Proposed paragraph (a) of the fee schedule would describe the CAT Fees to be paid by the Participants under the Funding Proposal. Specifically, paragraph (a) of the Participant fee schedule would state that ''[e]ach Participant shall pay the CAT Fee set forth in Section 11.3(a) of the CAT NMS Plan to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions in Eligible Securities in the prior month.''

6. Additional Changes From Original Funding Model

CAT LLC proposes certain revisions to Article XI of the CAT NMS Plan to implement the Funding Proposal. CAT LLC proposes to make the following changes to the CAT NMS Plan in addition to the proposed changes to the CAT NMS Plan discussed above.

a. Elimination of Definition of ''Execution Venue''

Section 1.1 of the CAT NMS Plan defines the term ''Execution Venue'' to mean ''a Participant or an alternative trading system ('ATS') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' Currently, the term ''Execution Venue'' is used in Sections 11.2 and 11.3 of the CAT NMS Plan to describe how CAT costs would be allocated among CAT Reporters under the Original Funding Model. The Original Funding Model would have imposed fees based on market share to CAT Reporters that are Execution Venues, including ATSs, and fees based on message traffic for Industry Members' non-ATS activities. In contrast, the Funding Proposal would impose fees based on the executed equivalent shares of transactions in Eligible Securities for three categories of CAT Reporters: Participants, CEBBs and CEBSs. Accordingly, as the concept for an ''Execution Venue'' would not be relevant for the Funding Proposal, CAT LLC proposes to delete this term and its definition from Section 1.1 of the CAT NMS Plan.

[52] As highlighted in *Exhibit B,* Section 11.3(b)(iv)(B) of the CAT NMS Plan was not included in the proposed revisions related to the 2022 Funding Proposal.

b. Use of Executed Equivalent Share Volume Under Funding Proposal

The Original Funding Model set forth in the CAT NMS Plan requires Participants and Execution Venue ATSs to pay CAT fees based on market share and Industry Members (other than Execution Venue ATSs) to pay CAT fees based on message traffic. The CAT NMS Plan also describes how the market share-based fee would be calculated for Participants and other Execution Venue ATSs and how the message traffic-based fee would be calculated for Industry Members (other than Execution Venue ATSs). CAT LLC proposes to amend the CAT NMS Plan to require Participants, CEBBs and CEBSs to pay CAT fees based on the number of executed equivalent shares in a transaction in Eligible Securities, rather than based on market share and message traffic. Accordingly, the Operating Committee proposes to amend Section 11.2(b) and (c) and Section 11.3(a) and (b) of the CAT NMS Plan to reflect the proposed use of the number of executed equivalent shares in transactions in Eligible Securities in calculating CAT fees.

Section 11.2(b) of the CAT NMS Plan states that ''[i]n establishing the funding of the Company, the Operating Committee shall seek . . . (b) to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.'' CAT LLC proposes to delete the requirement to take into account ''distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations.'' This requirement related to using message traffic and market share in the calculation of CAT fees, as message traffic and market share were metrics related to the impact of a CAT Reporter on the Company's resources and operations. With the proposed move to the use of the executed equivalent shares metric instead of message traffic and market share, the requirement is no longer relevant.

Section 11.2(c) of the CAT NMS Plan states that ''[i]n establishing the funding of the Company, the Operating Committee shall seek . . . (c) to establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic.'' CAT LLC proposes to delete subparagraphs (i) and (ii) and replace these subparagraphs with the requirement that the fee structure in which the fees charged to ''Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities.'' [53]

In addition, CAT LLC proposes to amend the CAT funding principles to clarify that CAT Fees and the Historical CAT Assessments are intended to be cost-based fees—that is, the fees are designed to recover the cost of the creation, implementation and operation of the CAT. CAT LLC proposes to amend the funding principle set forth in Section 11.2(c) by making a specific reference to the costs of the CAT. With this proposed change, Proposed Section 11.2(c) would state that ''[i]n establishing the funding of the Company, the Operating Committee shall seek: . . . to establish a fee structure in which the fees charged to Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities, and the costs of the CAT.''

Section 11.3(a) of the CAT NMS Plan provides additional detail regarding the market share-based fees to be paid by Participants and Execution Venue ATSs under the Original Funding Model. Specifically, Section 11.3(a) of the CAT NMS Plan states:

> (a) The Operating Committee will establish fixed fees to be payable by Execution Venues as provided in this Section 11.3(a):
>
> (i) Each Execution Venue that: (A) executes transactions; or (B) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not

[53] As discussed in the next section, the Operating Committee also proposes to delete the reference to a ''tiered'' fee structure.

be included in the calculation of such national security association's market share.

(ii) Each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

CAT LLC proposes to delete Section 11.3(a) of the CAT NMS Plan and replace this paragraph with a description of the CAT Fees related to Prospective CAT Costs, as described above.

Section 11.3(b) of the CAT NMS Plan provides additional detail regarding the message traffic-based CAT fees to be paid by Industry Members (other than Execution Venue ATSs) under the Original Funding Model. Specifically, Section 11.3(b) of the CAT NMS Plan states:

The Operating Committee will establish fixed fees to be payable by Industry Members, based on the message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers of fixed fees, based on message traffic. For the avoidance of doubt, the fixed fees payable by Industry Members pursuant to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) an ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.

CAT LLC proposes to delete Section 11.3(b) of the CAT NMS Plan and replace this paragraph with a description of the Historical CAT Assessments, as described above.

c. Elimination of Tiered Fees

CAT LLC proposes to eliminate the use of tiered fees that were included in the Original Funding Model. Instead, under the Funding Proposal, each Participant, CEBB or CEBS would pay a fee based solely on its transactions in Eligible Securities. The Operating Committee therefore proposes to amend Sections 11.1(d), 11.2(c), 11.3(a) and 11.3(b) of the CAT NMS Plan to eliminate tiered fees and related concepts.

Utilizing a tiered fee structure, by its nature, would create certain inequities among the CAT fees paid by CAT Reporters. For example, two CAT Reporters with comparable executed equivalent share volume may pay notably different fees if one falls in a higher tier and the other falls within a lower tier. Correspondingly, a tiered fee structure generally would reduce fees for CAT Reporters with higher executed share volume in one tier, while increasing fees for Industry Members with lower executed share volume in the same tier, as compared to a non-tiered fee. Furthermore, CAT Reporters in lower tiers potentially pay more than they would without the use of tiers. While tiering appropriately exists in various other self-regulatory fee programs, CAT LLC proposes to eliminate the tiering concept for the Funding Proposal.

By charging each Participant, CEBB and CEBS a CAT fee directly based on its own executed equivalent share volume, rather than charging a tiered fee, the Funding Proposal would result in a CAT fee being tied more directly to the CAT Reporter's executed share volume. In contrast, with a tiered fee, CAT Reporters with different levels of executed equivalent share volume that are placed in the same tier would all pay the same CAT fee, thereby limiting the correlation between a CAT Reporter's activity and its CAT fee.

The proposed non-tiering approach is simpler and more objective to administer than the tiering approach. With a tiering approach, the number of tiers for Participants, CEBBs and CEBSs, the boundaries for each tier and the fees assigned to each tier must be established. In the absence of clear groupings of CAT Reporters, selecting the number of, boundaries for, and the fees associated with each tier would be subject to some level of subjectivity. Furthermore, the establishment of tiers would need to be continually reassessed based on changes in the executed equivalent share volume of transactions in Eligible Securities, thereby requiring regular subjective assessments. Accordingly, the removal of tiering from the Funding Proposal eliminates a variety of subjective analyses and judgments from the model and simplifies the determination of CAT fees.

Section 11.1(d) of the CAT NMS Plan states that ''[c]onsistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, assignment of tiers, resolution of disputes, billing and collection of fees, and other related matters.'' With the elimination of tiered fees, the reference to the ''assignment of tiers'' would no longer be relevant for the Funding Proposal. Therefore, CAT LLC proposes to delete the reference to ''assignment of tiers'' from Section 11.1(d).

Section 11.1(d) of the CAT NMS Plan also states that:

For the avoidance of doubt, as part of its regular review of fees for the CAT, the Operating Committee shall have the right to change the tier assigned to any particular Person in accordance with fee schedules previously filed with the Commission that are reasonable, equitable and not unfairly discriminatory and subject to public notice and comment, pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.

As noted above, unlike the Original Funding Model, the Funding Proposal would not utilize tiered fees. Accordingly, these two sentences would not be applicable to the Funding Proposal. Therefore, CAT LLC proposes to delete these two sentences from Section 11.1(d) of the CAT NMS Plan.

CAT LLC proposes to delete the reference to ''tiered'' fees from Section 11.2(c) of the CAT NMS Plan. Section 11.2(c) of the CAT NMS Plan states that ''[i]n establishing the funding of the Company, the Operating Committee shall seek: . . . (c) to establish a tiered fee structure . . .'' CAT LLC propose to delete the word ''tiered'' from this provision as the CAT fees would not be tiered under the Funding Proposal.

CAT LLC also proposes to delete paragraph (iii) of Section 11.2(c) of the CAT NMS Plan. Paragraph (iii) of Section 11.2(c) of the CAT NMS Plan states that the Operating Committee shall seek to establish a tiered fee structure in which fees charged to:

the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) be generally comparable (where for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).

Under the Original Funding Model, the comparability provision was an important factor in determining the tiers for Industry Members and Execution Venues. In determining the tiers, the Operating Committee sought to establish comparable fees among the CAT Reporters with the most Reportable Events.[54] Under the Funding Proposal, however, the comparability provision is no longer necessary, as a tiered fee structure would not be used for Industry Members or Participants.

As discussed above, the Operating Committee proposes to replace the language in Sections 11.3(a) and (b) of the CAT NMS Plan with language implementing the Funding Proposal. These proposed changes would remove the references to tiers in Sections 11.3(a)(i) and (ii) and 11.3(b) of the CAT

[54] *See, e.g.,* Securities Exchange Act Rel. No. 82451 (Jan. 5, 2018), 83 FR 1399, 1406–07 (Jan. 11, 2018) (''2018 Fee Proposal Release'').

NMS Plan, along with the other proposed changes. Specifically, Section 11.3(a)(i) of the CAT NMS Plan states that the Operating Committee, when establishing fees for Execution Venues for NMS Stocks and OTC Equity Securities, will establish ''at least two and no more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share.'' Similarly, Section 11.3(a)(ii) of the CAT NMS Plan states that the Operating Committee, when establishing fees for Execution Venues that execute transactions in Listed Options, will establish ''at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share.'' Section 11.3(b) of the CAT NMS Plan states that the Operating Committee, when establishing fees to be payable by Industry Members, will establish ''at least five and no more than nine tiers of fixed fees, based on message traffic.'' CAT LLC proposes to delete each of these references to tiers from the CAT NMS Plan.

d. No Fixed Fees

As discussed above, CAT LLC proposes to replace the language in Sections 11.3(a) and (b) of the CAT NMS Plan with language implementing the Funding Proposal. These proposed changes also would remove the references to ''fixed fees'' in Sections 11.3(a), 11.3(a)(i), 11.3(a)(ii) and 11.3(b) and replaced them with references to ''fees.'' Under the Funding Proposal, the CAT fees to be paid by Participants, CEBBs and CEBSs will vary in accordance with their executed equivalent share volume of transactions in Eligible Securities, although the Fee Rate will be fixed for a relevant period. Therefore, the concept of a fixed fee—that is, a fee that does not vary depending on circumstances—is not relevant under the Funding Proposal.

7. Billing and Collection of CAT Fees

Consistent with Section 11.1(d) of the CAT NMS Plan, CAT LLC will adopt policies, procedures and practices regarding the billing and collection of fees. In addition, pursuant to Section 11.4 of the CAT NMS Plan, CAT LLC will establish a system for the collection of CAT fees from Participants and Industry Members. As set forth in Section 11.4 of the CAT NMS Plan, each Participant would be required to pay its CAT fees authorized under the CAT NMS Plan as required by Section 3.7(b) of the CAT NMS Plan.[55] Section 3.7(b) of the CAT NMS Plan provides the following:

> Each Participant shall pay all fees or other amounts required to be paid under this Agreement within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) (the ''Payment Date''). The Participant shall pay interest on the outstanding balance from the Payment Date until such fee or amount is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. If any such remaining outstanding balance is not paid within thirty (30) days after the Payment Date, the Participants shall file an amendment to this Agreement requesting the termination of the participation in the Company of such Participant, and its right to any Company Interest, with the SEC. Such amendment shall be effective only when it is approved by the SEC in accordance with SEC Rule 608 or otherwise becomes effective pursuant to SEC Rule 608.

Section 11.4 of the CAT NMS Plan also addresses the payment of CAT fees by Industry Members. Section 11.4 of the CAT NMS Plan states:

> Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due (as determined in accordance with the preceding sentence), such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (a) the Prime Rate plus 300 basis points; or (b) the maximum rate permitted by applicable law.

8. Illustrative Example of the Funding Proposal

CAT LLC has prepared an example of how a Historical CAT Assessment would be calculated pursuant to the Funding Proposal for illustrative purposes only. The illustrative example is set forth in *Exhibit C* to this filing. Note that the calculation of any actual Historical CAT Assessment for Historical CAT Costs would differ from this example in various ways, as described in more detail in *Exhibit C.*

9. Advantages of and Support for the Funding Proposal

CAT LLC proposes to adopt the Funding Proposal as it provides a variety of advantages over the Original Funding Model. CAT LLC discusses these advantages in this section of the filing.

a. Comparable to Existing Fee Precedent

The Funding Proposal would operate in a manner similar to other funding models employed by the SEC and the Participants, including the SEC's Section 31 fees, FINRA's trading activity fee (''FINRA TAF'') and the options regulatory fee (''ORF'') utilized by options exchanges. The SEC previously has determined that the Participants' sales value fees related to Section 31, the FINRA TAF and the ORF are consistent with the Exchange Act.

i. Section 31 Fees

Pursuant to section 31 of the Exchange Act, a national securities exchange must pay the Commission a fee based on the aggregate dollar amount of sales of securities transacted on the exchange, and a national securities association must pay the Commission a fee based on the aggregate dollar amount of sales of securities transacted by or through any member of the association otherwise than on a national securities exchange (collectively, ''covered sales''). The SEC calculates the amount of section 31 fees due from each exchange or FINRA by multiplying the aggregate dollar amount of its covered sales by the fee rate set by the Commission in a procedure set forth in section 31(j) of the Exchange Act. These fees are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. Section 31 requires the SEC to make annual and, in some cases, mid-year adjustments to the fee rate. These adjustments are necessary to make the SEC's total collection of transaction fees in a given year as close as possible to the amount of the regular appropriation to the Commission by Congress for that fiscal year.

To recover the costs of their section 31 fee obligations, each of the national securities exchanges and FINRA have adopted, and the SEC has approved, rules assessing a regulatory transaction fee on their members, the amount of which is set in accordance with section 31 of the Exchange Act.[56] Broker-dealers, in turn, often impose fees on their customers that provide the funds to pay the fees owed to the exchanges and FINRA.

Like the well-known, longstanding and accepted section 31-related fee model, the Funding Proposal would use

[55] Participants and CAT Executing Brokers would be responsible for a fee each month in which they are a CAT Reporter. If a Participant or CAT Executing Broker ceases to the meet the definition of a CAT Reporter during a month, the Participant or CAT Executing Broker would still be responsible for CAT fees associated with its transactions during that month.

[56] *See, e.g.,* Section 3 of Schedule A of FINRA's By-Laws.

a predetermined fee rate for the calculation of the fees, seek to recover designated regulatory costs (as CAT provides a solely regulatory function), and allow for the adjustment of the fee rate during the year to seek to match regulatory costs with fees collected. The Funding Proposal, however, would impose fees based on executed equivalent share volume rather than the sales values of certain transactions. Despite the different calculation metric, the Funding Proposal is similar to a model well known, long accepted and justified under the Exchange Act the purpose of which is also to cover costs associated with the regulation of securities markets and securities professionals.

ii. FINRA Trading Activity Fee

The transaction-based fees charged under the Funding Proposal also would be similar to FINRA's transaction-based trading activity fee,[57] which was modeled on the Commission's section 31 fee.[58] Although the FINRA TAF is designed to cover a subset of the costs of FINRA services (*e.g.,* costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities) rather than all of FINRA's costs like the CAT, the transaction-based calculation of the FINRA TAF and the proposed CAT fees are similar. With the FINRA TAF, FINRA members on the sell-side of a transaction are required to pay a per share fee for each sale of covered securities, which includes exchange registered securities, equity securities traded otherwise than on an exchange, security futures, TRACE-Eligible Securities and municipal securities, subject to certain exceptions. In approving the FINRA TAF, the SEC stated that the implementation of the FINRA TAF ''is consistent with section 15A(b)(5) of the Act, in that the proposal is reasonably designed to recover NASD costs related to regulation and oversight of its members.'' [59] The SEC further stated that ''[t]he Commission recognizes the difficulties inherent in restructuring the NASD's regulatory fees, and believes that the NASD has done so in a manner that is fair and reasonable.'' [60] The CAT fees calculated under the Funding Proposal would be similar to the FINRA TAF in that they would be transaction-based fees intended to provide funding for regulatory costs.

iii. Options Regulatory Fee

The fees charged under the Funding Proposal also would be similar to the ORF charged by the options exchanges.[61] The ORF is a per contract fee charged by an options exchange for certain options transactions to options members of the relevant exchange. The ORF is collected indirectly from exchange members through their clearing firms by the Options Clearing Corporation on behalf of the Exchange. Revenue generated from the ORF is designed to recover a material portion of an options exchange's regulatory costs related to the supervision and regulation of its members' options business, including performing routine surveillance, investigations, examinations and financial monitoring as well as policy, rulemaking, interpretive, and enforcement activities. Exchange members generally pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by self-regulatory organizations (''SROs'') to help the SROs meet their obligations under section 31 of the Exchange Act.[62] The CAT fees calculated under the Funding Proposal would be similar to the ORF in that they would be transaction-based fees intended to provide funding for regulatory costs.

b. Fee Metric: Executed Equivalent Share Volume

CAT LLC proposes to use the executed equivalent share volume of transactions in Eligible Securities as the means for allocating CAT costs among Participants and Industry Members. The use of executed equivalent share volume would replace the use of message traffic for allocating costs among Industry Members and the use of market share for allocating costs among Participants as set forth in the Original Funding Model. The use of executed equivalent share volume is a reasonable and equitable method for allocating costs for a variety of reasons, and CAT LLC believes it improves upon the use of message traffic.

The proposed use of CAT-reported message traffic as set forth in the Original Funding Model raised a variety of issues for allocating CAT costs. First, based on a subsequent study of cost drivers for the CAT, it was determined that message traffic may be a factor in the CAT costs, but it is not the primary factor. CAT costs are dominated by technology costs, and the predominant technology costs are data processing (*e.g.,* linker) and storage costs.[63] The data processing and storage costs are related to the level of message traffic, but such costs also relate to other factors. The data processing and storage costs also are directly related to the complexity of the reporting requirements for the market activity. For example, in light of the complexity of market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.[64] The processing and storage of such a large number of complex reporting scenarios requires very complex algorithms, which, in turn, lead to significant data processing and storage costs. The data processing and storage costs also are driven by the stringent performance, timelines and operational requirements for processing CAT Data. For example, the CAT NMS Plan requires that CAT order events be processed within established timeframes to ensure data can be made available to Participants' regulatory staff and the SEC in a timely manner. Accordingly, a CAT Reporter's message traffic may be a factor, but not a primary factor, in terms of the costs of the CAT.

Second, in general, Industry Member revenue, including revenue derived from fees Industry Members charge their clients, is often driven by transactions. Because message traffic is separate from whether or not a transaction occurs, fees based on message traffic may not correlate with common revenue or fee models. As a result, CAT fees based on message traffic could impose an outsized adverse financial impact on certain Industry Members.

Third, imposing CAT fees on each CAT Reporter based on its message traffic may have an adverse effect on competition, liquidity or other aspects of market structure, and may increase model complexity. For example, the number of messages for any given order, whether or not ultimately executed, could vary depending on how a given order is processed, leading to a lack of predictability on the applicable cost to

[57] Section 1 of Schedule A of FINRA's By-Laws.

[58] *See* Securities Exchange Act Rel. No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002).

[59] Securities Exchange Act Rel. No. 47946 (May 30, 2003), 68 FR 34021, 34023 (June 6, 2003) (''TAF Release'').

[60] *Id.*

[61] *See, e.g.,* Cboe Fee Schedule, MIAX Fee Schedule, and NYSE Arca Fee Schedule.

[62] *See, e.g.,* Securities Exchange Act Rel. No. 58817 (Oct. 20, 2008), 73 FR 63744, 63745 (Oct. 27, 2008).

[63] For a detailed discussion of cost drivers of the CAT, *see* CAT LLC Webinar, CAT Costs (Sept. 21, 2021), *https://www.catnmsplan.com/events/cat-costs-september-21-2021.*

[64] CAT Industry Member Reporting Scenarios, Version 4.10 (Oct. 21, 2022), *https://www.catnmsplan.com/sites/default/files/2022-10/10.21.22_Industry_Member_Tech_Specs_Reporting_Scenarios_v4.10_CLEAN.pdf.*

process any given order or executions for broker-dealers or non-broker-dealer customers.[65] As one example, discussed in the context of the previously proposed funding models,[66] market makers in Eligible Securities may have very high levels of message traffic due to their quoting obligations. Such high levels of message traffic may lead to outsized fees for market makers in comparison to their transaction activity, thereby placing an excessive financial burden on market makers. This, in turn, may lead to a decrease in the number of market makers, resulting in a decrease in liquidity and a reduction in market quality. To address this effect on market makers, CAT LLC proposed to discount the fees that market makers would need to pay. However, such a discount adds complexity to the message traffic approach, as the model must determine when a discount is necessary and how much the discount should be.

The use of executed equivalent share volume to allocate CAT costs addresses each of these concerns. The fees are not divorced from transactions, the traditional source of revenue for Industry Members; fees based on executed equivalent share volume would not adversely impact certain market participants to the detriment of the markets, and the model is simple to understand and implement. Moreover, in addition to these benefits, the executed equivalent share volume is related to, but not precisely linked to, the CAT Reporter's burden on the CAT. In light of the many inter-related cost drivers of the CAT (*e.g.,* storage, message traffic, processing), determining the precise cost burden imposed by each individual CAT Reporter on the CAT is not feasible. Accordingly, CAT LLC has determined that trading activity provides a reasonable proxy for cost burden on the CAT, and therefore is an appropriate metric for allocating CAT costs among CAT Reporters. This conclusion is consistent with the SEC's prior recognition of the use of transaction volume in setting regulatory fees. For example, in approving the FINRA TAF, the SEC recognized that transaction volume was closely enough connected to FINRA's regulatory responsibilities to satisfy the statutory standard in the Exchange Act.[67]

[65] The predictability of fees is discussed further below in Section A.9.u of this filing.

[66] *See* 2018 Fee Proposal Release.

[67] TAF Release at 34024.

c. CAT Executing Brokers

i. Charging CAT Executing Brokers

CAT LLC proposes to charge CAT fees to CAT Executing Brokers. CAT LLC believes that such an approach is consistent with the requirements of the Exchange Act for a variety of reasons, including the following reasons.

First, the proposal to charge executing brokers is broadly supported by the industry.[68] For example, SIFMA has supported charging executing brokers, and continues to support charging executing brokers, rather than clearing brokers.[69] In one of its comment letters on the 2022 Funding Proposal, SIFMA stated that ''we support the Participants' decision to allocate CAT costs to executing brokers rather than clearing brokers.'' [70]

Second, the proposal to rely on executing brokers, rather than clearing brokers, was proposed in direct response to comments raised by SIFMA and other commenters on the 2022 Funding Proposal regarding the cost burden that clearing firms may experience if clearing brokers were charged CAT fees.[71] As noted by commenters, imposing the fee payment obligation on clearing brokers, rather than on executing brokers more generally, potentially may impose a significant financial burden on clearing firms if the fees imposed on clearing firms are not passed through to their clients.

Third, charging the CEBBs and CEBSs would reflect the executing role the CEBB and CEBS have in each transaction. Such a fee model is currently used and well-known in the securities markets. For example, SRO members regularly pay transaction-based fees. As a result, the CAT fees could be paid by Industry Members without requiring significant and potentially costly changes.

Fourth, charging CEBBs and CEBSs is in line with the use of transaction reports from the exchanges and FINRA's equity trading reporting facilities for calculating the CAT fees. The CEBBs and CEBSs are identified on the transaction reports, thereby streamlining the CAT collection process.

Fifth, CAT LLC does not believe that the proposal would burden CAT Executing Brokers. The CEBBs and CEBSs could determine, but would not be required, to pass their CAT fees through to their clients, who, in turn, could pass their CAT fees to their clients, until the fee is imposed on the ultimate participant in the transaction. With such a pass-through, the CEBBs and CEBSs would not ultimately incur the cost of all CAT fees related to their transactions. It is common practice in the industry for broker-dealers to pass transaction-based fees through to their clients, and CAT fees would introduce no unique issues for passing the CAT fee on to clients.

Finally, the proposal to charge CAT Executing Brokers CAT fees as set forth in the Funding Proposal only addresses the party responsible for the payment of the CAT fee. As an administrative matter regarding the method of payment, each CAT Executing Broker may seek to enter into a bilateral arrangement with its clearing broker for the clearing broker to collect and pass-through the CAT fees as it does in other contexts.

ii. Effect on Net Capital of CAT Executing Brokers

CAT fees do not raise new or different issues for CAT Executing Brokers with respect to net capital requirements than other transaction-based fees charged to executing brokers. CAT fees will be billed on a monthly basis, and Section 11.4 of the CAT NMS Plan states that ''Participants shall require each Industry Member to pay all applicable fees authorized under this Article XI within thirty (30) days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated).'' With respect to net capital requirements, CAT Executing Brokers may determine whether to establish arrangements with their brokerage clients to account for costs incurred by the CAT Executing Broker on the client's behalf, including setting the terms under which they must be repaid by their broker-dealer clients such that receivables need not extend beyond 30 days.

[68] *See* Partial Amendment I at 74185; February 2023 Proposed Partial Amendment at 5.

[69] *See* Letter from Ellen Greene, Managing Director, Equities and Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, SEC (Dec. 14, 2022) (''December 2022 SIFMA Letter'') at 2; Letter from Ellen Greene, Managing Director, Equities and Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, SEC (Oct. 7, 2022) at 4–5.

[70] Letter from Ellen Greene, Managing Director, Equities and Options Market Structure, and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, SEC (Jan. 12, 2023) at 7. *See also* December 2022 SIFMA Letter at 2 (''[W]e support changing the payment obligation to executing brokers.'').

[71] *See* Partial Amendment I at 74185; February 2023 Proposed Partial Amendment at 5.

d. Cost Allocation

i. One-Third/One-Third/One-Third Allocation of Prospective CAT Costs Between CEBS, CEBB and Participant

When calculating the CAT Fees related to Prospective CAT Costs under the Funding Proposal, CAT LLC proposes to allocate one-third of Prospective CAT Costs to Participants, one-third of Prospective CAT Costs to CEBSs and one-third of Prospective CAT Costs to CEBBs. CAT LLC believes that this proposed allocation satisfies the requirements of the Exchange Act and Rule 608 of Regulation NMS under the Exchange Act.

The proposed ⅓, ⅓, ⅓ allocation of Prospective CAT Costs recognizes the three primary roles in each transaction: the buyer, the seller and the market regulator, and assigns an equal one-third share of the fee per transaction to each of these three roles. The Exchange Act itself recognizes the importance of these three roles in a transaction by imposing registration and other regulatory obligations on the broker-dealers and regulator involved in a transaction. This allocation is similar to the approach taken with the FINRA TAF, ORF and section 31 sales value fees, and also recognizes the role of the market regulator and the buyer in the transaction as well as the seller.

Furthermore, the allocation of two-thirds of the CAT costs to Industry Members and only one-third to Participants recognizes that a substantial portion of CAT costs originates from Industry Members. CAT costs are dominated by technology costs, and the predominant technology costs are data processing (*e.g.,* linker) and storage costs. The data processing and storage costs are related to message traffic and the complexity of the reporting requirements for CAT, which, in turn, are determined by market activity. Industry Members are responsible for originating trading activity that necessitates message traffic to the CAT, and the complexity of Industry Members' chosen business models contributes substantially to the costs of the CAT.

One of the factors driving CAT costs is the complexity of the Industry Members' CAT reporting requirements, which are driven by the inherent complexity of Industry Members' chosen business models. For example, in light of the complexity of market activity, the CAT's reporting scenarios document for Industry Members is over 800 pages in length, addressing almost 200 scenarios, including, for example, scenarios related to representative orders, internal routing, order modification, order cancellation, ATS scenarios, OTC scenarios, foreign scenarios, child orders, proprietary orders, fractional shares, stop and conditional orders, RFQs, floor activity and more.[72] The processing and storage of such a large number of complex reporting scenarios requires very complex algorithms, which, in turn, lead to significant data processing and storage costs. In contrast, the Participants do not originate market activity or orders or otherwise bring this level of complexity to the markets. As a result, the technical specifications for the Participants are far less complex than for Industry Members. For example, the technical specifications for Participants have 13 reporting events for stock exchanges compared to 36 equity reporting events in the technical specifications for Industry Members, and the technical specifications for Participants have 14 reporting events for options exchanges compared to 43 reporting options events in the technical specifications for Industry Members.[73] Since the complexity of Industry Members' chosen business models contribute substantially to the costs of the CAT, it is reasonable and equitable to require that Industry Members pay a substantial portion of those costs.

Participant activity does not impact CAT costs in the same way that Industry Member activity impacts CAT costs. The analysis regarding the complexity of Industry Member activity is based on the effects of the business models *on the costs of the CAT,* not on the complexity of the market generally. The complexity of Industry Member activity adds significantly to the cost of the CAT in a way that Participant activity does not.

Moreover, allocating a greater percentage of the CAT costs to Participants would raise fairness issues in light of the greater financial resources of Industry Members. There are only 25 Participants and approximately 1,100 Industry Members.[74] Moreover, based upon an analysis of available CAT Reporter revenue, Participants only represented approximately 4% of the total CAT Reporter revenue while Industry Members represented 96% of the total CAT Reporter revenue.[75] In addition, various individual Industry Members have revenue in excess of some or all of the Participants. Accordingly, CAT LLC determined that allocating a higher percentage of the total CAT costs to the Participants was not a fair and equitable approach.

Finally, CAT LLC analyzed a variety of alternative allocations of CAT costs and continues to support the proposed one-third, one-third, one-third allocation as consistent with the requirements of the Exchange Act and the CAT NMS Plan. Alternative allocations considered by CAT LLC are discussed in detail below in Section A.10 of this filing.

ii. ⅓, ⅓ Allocation for Historical CAT Assessment

Under the Funding Proposal, the CEBS and the CEBB would each pay one-third of the fee obligation for each transaction related to Historical CAT Costs. Because the Participants have already paid for Past CAT Costs via loans to CAT LLC, the Participants would not be required to pay any Historical CAT Assessment. As stated in Proposed Section 11.3(b)(ii) of the CAT NMS Plan, ''[i]n lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.'' Furthermore, Proposed Section 11.3(b)(ii) of the CAT NMS Plan would emphasize that ''[t]he Historical CAT Assessment is designed to recover two-thirds of the Historical CAT Costs.'' Like with the allocation of Prospective CAT Costs discussed above, CAT LLC believes that the proposed allocation of the Historical CAT Costs is consistent with the requirements of the Exchange Act and the CAT NMS Plan,

[72] CAT Industry Member Reporting Scenarios, Version 4.10 (Oct. 21, 2022), *https://www.catnmsplan.com/sites/default/files/2022-10/10.21.22_Industry_Member_Tech_Specs_Reporting_Scenarios_v4.10_CLEAN.pdf.*

[73] *Compare* CAT Reporting Technical Specifications for Plan Participants, Version 4.1.0-r17 (Feb. 21, 2023), *https://www.catnmsplan.com/sites/default/files/2023-02/02.21.2023-CAT-Reporting-Technical-Specifications-for-Participants-4.1.0-r17.pdf, with* CAT Reporting Technical Specifications for Industry Members, Version 4.0.0 r18 (Dec. 16, 2022), *https://www.catnmsplan.com/sites/default/files/2022-12/12.16.2022_CAT_Reporting_Technical_Specifications_for_Industry_Members_v4.0.0r18_CLEAN.pdf.*

[74] An average of 1,124 unique CAT Reporters sent transaction data to the CAT from July 1, 2022 to August 8, 2022.

[75] *See* Securities Exchange Act Rel. No. 91555 (Apr. 14, 2021), 86 FR 21050, 20155 (Apr. 21, 2021) (''2021 Fee Proposal Release''). Industry Member revenue was calculated based on the total revenue reported in the Industry Member's FOCUS reports. Participant revenue was calculated based on revenue information provided in Form 1 amendments and/or publicly reported figures. Participants are not required to file uniform FOCUS-type reports regarding revenue like Industry Members. Accordingly, the revenue calculation for Participants is not as straightforward as for Industry Members.

iii. Internal Cost of Compliance by Industry Members

CAT LLC does not propose to take into consideration the internal costs incurred by Industry Members in complying with CAT requirements in determining how to allocate costs between Industry Members and Participants. There is no precedent for regulatory fees to be determined based on the cost of compliance of the regulated entity. Regulatory fees are intended to cover the regulatory costs of the entity providing the regulation. In the case of the CAT, the Funding Proposal is intended to charge fees to pay for the direct costs of the CAT, not for ancillary compliance costs of Industry Members.[76] Moreover, as a practical matter, accurately determining an Industry Member's compliance costs, without recordkeeping requirements and appropriate standards to determine expenses accurately, would be infeasible.

Likewise, the substantial internal compliance costs of the Participants are not taken into consideration in the Funding Proposal. Each Participant incurs its own internal costs to comply with the requirements of the CAT NMS Plan, including, among other things, updating its systems for CAT reporting. Additionally, Participants have expended countless internal hours on the creation, implementation and operation of the CAT. These costs are not included in the cost allocation under the Funding Proposal.

iv. Alternative Approach Based on Individualized CAT Reporter Cost to CAT

CAT LLC has determined not to propose a funding approach for the CAT in which a CAT Reporter's fees would be based on each CAT Reporter's exact cost burden on the CAT. In light of the many inter-related cost drivers of the CAT (*e.g.,* storage, message traffic, processing), determining the precise cost burden imposed by each individual CAT Reporter on the CAT is not feasible. Moreover, trading activity provides a reasonable proxy for cost burden on the CAT, and therefore is an appropriate metric for allocating CAT costs among CAT Reporters. CAT LLC emphasizes that the Exchange Act requires CAT fees to be fair, reasonable and equitably allocated, and CAT LLC believes that the use of executed equivalent share volume satisfies these requirements. The Exchange Act does not require each CAT Reporter's fees to be a proxy for that CAT Reporter's cost burden on the CAT, let alone an exact proxy.

A. Difficulty in Determining Individual CAT Reporter Costs Due to Inter-Related Cost Drivers

CAT LLC has analyzed the cost drivers for the CAT, and has concluded that determining the precise cost burden imposed by each individual CAT Reporter on the CAT is not feasible. The computation of a specific CAT Reporter's burden on the CAT is complicated by the many inter-related factors that contribute to CAT costs, including message traffic, data processing, storage, the complexity of reporting requirements, reporting timelines, infrastructure, connectivity and more. The use of executed equivalent share volume as the metric for the funding model is an improvement over the message traffic model. CAT LLC analyzed the cost drivers of CAT and determined that, although message traffic is one factor in CAT costs, it is not the primary factor. CAT costs are dominated by technology costs, and the predominant technology costs are data processing (*e.g.,* linker) and storage costs. Compute costs represent more than half of all technology costs. While such costs are related in part to message traffic, they are driven by the stringent performance timelines, data complexity and operational requirements in the CAT NMS Plan. The Plan requires that order events be processed, corrected, and made available to regulatory users within established timeframes, including a four-hour window for initial linkage processing. For this reason, among other issues with the message traffic model and other considerations discussed herein, CAT LLC determined to shift its focus to the new metric of executed equivalent share volume from the message traffic and market share metrics set forth in the CAT NMS Plan as approved.

B. Trading Activity as Reasonable Proxy for Cost Burden

CAT LLC determined that trading activity provides a reasonable proxy for cost burden on the CAT, and therefore is an appropriate metric for allocating CAT costs among CAT Reporters. CAT LLC analyzed reasonable metrics for determining CAT fees, and determined that, although executed equivalent share volume is not an exact proxy for the cost burden (nor need it be), trading activity provides a reasonable proxy for cost burden on the CAT. Increased trading activity impacts message traffic, data processing, storage and other factors, and thus necessarily correlates with increased cost burden on the CAT. Moreover, Industry Member activity in the market generally is engaged in for the purpose of effecting transactions, and, as a result, it is common for Participants to use transaction-based fees. Therefore, executed share volume is an appropriate metric for allocating CAT costs among CAT Reporters.

This conclusion is consistent with the SEC's prior recognition of the use of transaction volume in setting regulatory fees. For example, in approving FINRA's TAF, the SEC recognized that transaction volume was closely enough connected to FINRA's broad regulatory responsibilities to satisfy the statutory standard in the Exchange Act.[77] FINRA proposed a transaction-based TAF to fund its member regulatory activities in a variety of areas such as ''sales practices, routine examinations, financial and operational reviews, new member applications, enforcement * * *. . . wherever such member activity occurs.'' [78] The SEC noted that ''[a]ssessing fees in relation to transactions correlates to heightened NASD responsibilities regarding firms that engage in the trading,'' but the fees were not an exact proxy for the costs of such regulatory responsibilities.[79] The SEC noted this lack of a precise correlation:

> In most cases, the NASD has direct responsibility to oversee the firm's dealing with the public in effecting the transactions; the NASD may also have responsibility to oversee the impact of the trading on the firm's financial condition. In most cases, where responsibility for certain member activities has been allocated to other SROs, the NASD retains responsibility for other member functions.[80]

Nevertheless, the SEC concluded that ''while trading activity is not wholly correlated to the full range of NASD responsibility for members in all instances, the Commission believes that they are closely enough connected to satisfy the statutory standard.'' [81] CAT LLC believes that this same logic is applicable to the Funding Proposal.

v. Alternative Approach: 50–50 Allocation Between Industry Members and Participant Exchanges

CAT LLC has considered and rejected allocating 50% of CAT costs to the

[76] *See* CAT NMS Plan Approval Order at 84795, n.1749 (''The Participants stated that the funding model provides a framework for the recovery of the costs to create, develop and maintain the CAT, and is not meant to address the cost of compliance for Industry Members and Participants with the reporting requirements of Rule 613.'').

[77] TAF Release at 34023.

[78] *Id.*

[79] *Id.*

[80] *Id.*

[81] *Id.* at 34024.

Participants and 50% to Industry Members under the Funding Proposal. Although a 50–50 allocation between Industry Members and Participants would provide a mathematically equal split between two groups, it would not provide an equitable allocation between and among Industry Members and Participants. Such an allocation raises fairness issues as Industry Members have far greater financial resources than the Participants, and the complexity of Industry Members' chosen business models contribute substantially to the costs of the CAT.

e. Fee Pass-Throughs

i. General

CAT LLC acknowledges that CAT Executing Brokers may choose to pass the CAT fees through to their clients, who, in turn, may pass their CAT fees through to their clients, until the fees are imposed on the account that executed the transaction. Although the Funding Proposal does not require such fee pass-throughs, CAT LLC continues to support the concept of the potential pass-through of fees for various reasons.

First, the SEC specifically contemplated and accepted the concept of cost pass-throughs from Participants to their members when it adopted Rule 613:

> There also would be costs associated with establishing and operating the central repository that will be jointly owned by the plan sponsors. The Commission believes it is important to understand how the plan sponsors plan to allocate such costs among themselves to help inform the Commission's decision regarding the possible economic or competitive impact of the NMS plan amongst the SROs. In addition, although the plan sponsors likely would initially incur the costs to establish and fund the central repository directly, *they may seek to recover some or all of these costs from their members.* If the plan sponsors seek to recover costs from their members, the Commission believes that it is important to understand the plan sponsors' plans to allocate costs between themselves and their members, to help inform the Commission's decision regarding the possible economic or competitive impact of the NMS plan.[82]

Second, CAT LLC does not take a position on whether Industry Members, in turn, should pass CAT fees on to their clients. However, in adopting the CAT NMS Plan, the Commission specifically contemplated and accepted that ''broker-dealers may seek to pass on to investors their costs to build and maintain the CAT, which may include their own costs and any costs passed on to them by Participants,'' noting that the ''extent to which these costs are passed on to investors depends on the materiality of the costs and the ease with which investors can substitute away from any given broker-dealer.'' [83]

Third, CAT LLC notes that the use of pass-through fees is a commonly accepted practice that has been approved by the SEC in the securities markets in some cases. For example, the practice of passing through fees to broker-dealers and their customers is used in the context of section 31 fees. Section 31 of the Exchange Act places obligations only on national securities exchanges, national securities associations, and the Commission. National securities exchanges and national securities associations must pay certain fees and assessments to the Commission. The Commission is required by section 31 of the Exchange Act to collect such fees and assessments. Section 31 of the Exchange Act, however, does not address the manner or extent to which covered SROs may seek to recover the costs of their section 31 obligations from their members. Nor does section 31 of the Exchange Act address the manner or extent to which members of covered SROs may seek to pass any such charges on to their customers. However, as the SEC noted, ''[i]n practice, the covered SROs obtain the funds for these fees and assessments by assessing charges on their members, and the members in turn pass these charges to their customers.'' [84] Likewise, in adopting the CAT NMS Plan, the Commission explained that under section 31, ''Participants are required to pay transaction fees and assessments to the Commission,'' that ''Participants, in turn, may collect their section 31 fees and assessments from their broker-dealer members,'' and, that ''broker-dealers may pass on regulatory charges that support Participant supervision, such as with respect to section 31 fees.'' [85]

Indeed, the language of certain exchange rules regarding section 31 specifically describe the pass-through process related to section 31 fees.[86] For example, NYSE Arca Rule 2.18.01 states the following:

> Pursuant to Rule 2.18, the Exchange makes an assessment on ETP Holders that the Exchange uses to pay fees owing to the SEC in accordance with section 31 of the Exchange Act (''the Rule 2.18 assessment''). The section 31 fees payable by the Exchange to the SEC is determined based on the aggregate dollar amount of ''covered sales,'' as defined by SEC Rule 31, effected on the Exchange by or through any ETP Holder. ETP Holders, in some cases, have passed along the Rule 2.18 assessment on a trade-by-trade basis to their customers or correspondent firms.''

The pass-through concept also is applied in the context of other SRO regulatory fees applicable to the SROs' members. For example, ''it is regular practice among some clearing and trading firms to 'pass through' the TAF to the underlying firm executing the trade. Further, FINRA understands that the executing firms commonly pass the TAF directly on to their customers. Typically, TAF fees are reflected on the confirmation statement received by customers.'' [87] Similarly, the pass-through process is used for ORFs as well. ORFs are collected indirectly from members through their clearing firms by OCC on behalf of the respective options exchange. As noted in rule filings related to ORFs, ''[t]he Exchange expects that [members] will pass through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by Self-Regulatory Organizations ('SROs') to help the SROs meet their obligations under section 31 of the Exchange Act.'' [88]

Fourth, commenters on prior CAT funding proposals have commented in favor of a model similar to the section 31 fees in which the fee could be passed through to Industry Members and ultimate customers.[89] For example, one commenter noted the benefits of a

[82] *See generally* Securities Exchange Act Rel. No. 67457 (Jul. 18, 2012), 77 FR 45722, 45795 (Aug. 1, 2012) (''Rule 613 Adopting Release'') (emphasis added).

[83] CAT NMS Plan Approval Order at 84992.

[84] Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). *See also* SEC, Section 31 Transaction Fees, Fast Answers, *https://www.sec.gov/fast-answers/answerssec31htm.html* (noting that the ''[t]he SROs have adopted rules that require their broker-dealer members to pay a share of these fees. Broker-dealers, in turn, impose fees on their customers that provide the funds to pay the fees owed to their SROs.)''

[85] CAT NMS Plan Approval Order at 84992.

[86] *See, e.g.,* NYSE American Rule 393.01; and NYSE Rule 440H.03.

[87] Securities Exchange Act Rel. No. 90176 (Oct. 14, 2020), 85 FR 66592, 66603 (Oct. 20, 2020).

[88] Securities Exchange Act Rel. No. 67596 (Aug. 6, 2012), 77 FR 47902, 47903 (Aug. 10, 2012). *See also* Securities Exchange Act Rel. No. 61133 (Dec. 9, 2009), 74 FR 66715, 66716 (Dec. 16, 2009) (noting that ''[t]he Exchange expects that member firms will pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by SROs to help the SROs meet their obligation under Section 31 of the Exchange Act''); Securities Exchange Act Rel. No. 83878 (Aug. 17, 2018), 83 FR 42715, 42717 (Aug. 23, 2018) (noting that ''by collecting the ORF in this manner Members and non-Members could more easily pass-through the ORF to their customers'').

[89] *See, e.g.,* Letter from Michael Blaugrund, Chief Operating Officer, NYSE, to Vanessa Countryman, Secretary, SEC (May 10, 2021) at 3; Letter from Andrew Stevens, General Counsel, IMC Chicago, LLC, to Vanessa Countryman, Secretary, SEC (May 20, 2021) at 3.

model similar to the section 31 fees, arguing that ''[i]t would also provide transparency into the fees which seek to recoup costs and a vehicle to pass-thru fees to the ultimate beneficiary of each trade.'' [90] Another commenter similarly advocated for a section 31-type model, noting that ''SROs already have a well-established model for recouping their section 31 fees by passing them through to their members.'' [91]

Finally, the proposed pass-through process for CAT fees, like the pass-through process for other regulatory fees, recognizes the reality that regulatory costs incurred to maintain and enhance the quality of the markets will necessarily increase costs for all market participants, including the ultimate investor. Even if such pass-throughs were limited or prohibited, CAT costs would be distributed in other ways. A member of the Advisory Committee for the CAT and the former Chief Economist of the Commission, emphasized that ''[b]ecause the markets for exchange, dealing, and brokerage services are all highly competitive in the long run, any fees imposed on any of these groups will ultimately pass through to the retail and institutional traders who use the markets.'' [92] This commenter reasoned that:

> In highly competitive markets, prices reflect the costs of doing business in the long run. If those costs rise, they ultimately pass through to the customers. For example, if the Participants (primarily exchanges) were required to fund CAT NMS fully, they will raise their fees (or fail to lower them when costs are falling) to recover their funding costs. And if brokers' business models require that they pay exchange fees on behalf of their clients, the brokers will raise their commission rates to the customers. And if their business models require zero commissions, brokers will provide fewer services or charge more for non-transaction services to cover their increased costs.[93]

ii. Effect of Allocation on Fee Pass-Throughs

CAT LLC determined not to allocate all CAT costs to Participants under the Funding Proposal. Under the Funding Proposal, CEBBs would be allocated one-third of the CAT costs, CEBSs would be allocated one-third of the CAT costs and Participants would be allocated one-third of the CAT costs. Under the Funding Proposal, Industry Members may determine to pass their CAT fees on to their clients at their discretion. Participants also may determine to pass their CAT fees on to their members, or to pay the CAT fees charged to the Participant through other means. If Participants were to determine to pass CAT fees on to their members, they may choose to adopt a CAT-specific fee that directly passes the CAT fee through to their members, in whole or in part, or they may choose to increase other fees charged to members (*e.g.,* transaction fees). Participants would need to file any such fee proposals with the SEC in accordance with section 19(b) of the Exchange Act.

If all CAT costs were allocated to Participants, however, Participants would have the same options for covering the costs of the CAT fees. They may choose to adopt a CAT-specific fee that directly passes through the CAT fee through to their members, in whole or in part, or they may choose to increase other fees charged to members (*e.g.,* transaction fees). Participants would need to file any such fee proposals with the SEC in accordance with section 19(b) of the Exchange Act. For any fee charged to Industry Members, Industry Members may determine to pass their CAT fees on to their clients at their discretion, as with the CAT fees under the Funding Proposal.

f. FINRA Fee

Under the Funding Proposal, for each transaction in Eligible Securities based on CAT Data, the CEBS, the CEBB and the applicable Participant for the transaction each would pay a CAT Fee calculated by multiplying the number of executed equivalent shares in the transaction and the applicable Fee Rate and dividing the product by three. The applicable Participant for the transaction would be the national securities exchange on which the transaction was executed, or FINRA for each transaction executed otherwise than on an exchange. CAT LLC believes that the proposed CAT fees for FINRA are consistent with the Exchange Act and the CAT NMS Plan. CAT LLC does not believe that the assessment of a CAT fee on FINRA in the same manner as other Participants would result in a burden on competition for FINRA or for Industry Members engaging in activity otherwise than on an exchange.

The Funding Proposal is designed to be neutral as to the manner of execution and place of execution. The CAT fees would be the same regardless of whether the transaction is executed on an exchange or in the over-the-counter market. All Participants are self-regulatory organizations that have the same regulatory obligations under the Exchange Act, regardless of whether they operate as a for-profit or not-for-profit entity. Their usage of CAT Data, either directly or indirectly through regulatory services agreements, would be for the same regulatory purposes in accordance with those obligations. By treating each Participant the same, the CAT fees would not become a competitive issue by and among the Participants.

In addition, the size of FINRA's fee is calculated based on the activity in the over-the-counter market, which is substantial. For example, the executed equivalent share volume for over-the-counter trades in Eligible Securities in 2021 was 1,361,484,729,008 out of a total volume of 3,963,697,612,395 executed equivalent shares for trades in Eligible Securities.[94] Accordingly, approximately 34% of the executed equivalent share volume in Eligible Securities took place in the over-the-counter market.

Moreover, FINRA and the exchanges should not be evaluated differently based upon the potential for any particular Participant to pass its CAT fees onto its members through regulatory, trading or other fees. Each Participant will need to determine for itself how it will obtain the funds to pay for its CAT fees. Because each Participant, not just FINRA, is using CAT Data to satisfy the same self-regulatory obligations, each Participant may determine to charge their members fees to fund their share of the CAT fees, and the Exchange Act specifically permits self-regulatory organizations to do so, provided the fee filing requirements of the Exchange Act are satisfied. Indeed, in approving the CAT NMS Plan, the SEC stated that ''the Exchange Act specifically permits the Participants to charge members fees to fund their self-regulatory obligations.'' [95]

Furthermore, FINRA and the exchanges should not be evaluated differently based upon the potential for a particular Participant to recoup its fees through revenue-generating activity other than fees imposed on its members. FINRA, just like the exchange Participants, has revenue sources other than membership fees. For example, FINRA generates significant revenues via regulatory services agreements with

[90] Letter from James Toes, President and CEO, and Andre D'Amore, Chairman of the Board, Securities Trader Association, to Vanessa Countryman, Secretary, SEC (June 10, 2021) at 4.

[91] Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Vanessa Countryman, Secretary, SEC (May 12, 2021) at 4.

[92] Letter from Larry Harris, Fred V. Keenan Chair in Finance, USC Marshal School of Business, to Vanessa Countryman, Secretary, SEC (June 21, 2022) (''Harris Letter'') at 2.

[93] *Id.*

[94] These figures for executed equivalent share volume for 2021 are set forth in the illustrative example in the notice of the 2022 Funding Proposal. *See* 2022 Funding Proposal Release at 33246.

[95] CAT NMS Plan Approval Order at 84794.

the exchanges, among other sources.[96] These sources, too, may be used to pay CAT fees, and, if they are used, it would not lead to an increase in fees for Industry Members, but rather the exchange Participants. Any review of how the Participants obtain their funds to pay CAT fees is beyond the scope of the CAT fee filing.

The issues raised regarding the possibility of passing FINRA's allocation to Industry Members also fail to recognize the basic fact that Industry Members themselves face the same issue that they raise with regard to FINRA. Industry Members may determine to pass their CAT fees through to their customers, just as they may do with section 31-related fees and other fees. Accordingly, the two-thirds allocation of CAT costs to Industry Members may be entirely passed through to investors, thereby alleviating Industry Members of any burden of funding the CAT. As one commenter on the 2022 Funding Proposal, a former member of the Advisory Committee for the CAT and the former Chief Economist of the Commission, noted, ''[b]ecause the markets for exchange, dealing, and brokerage services are all highly competitive in the long run, any fees imposed on any of these groups will ultimately pass through to the retail and institutional traders who use the markets.'' [97]

Finally, CAT LLC does not believe that FINRA should not be treated as a market center for CAT funding purposes merely because FINRA is not treated as a market center for governance purposes under the National Market System Plan Regarding Consolidated Equity Market Data (''CT Plan''). Although the CT Plan and the CAT Plan are both national market system plans, their purpose and implementation are different. The CAT NMS Plan, as approved by the Commission, explicitly contemplates charging fees to all Participants, including FINRA. For example, Section 11.1(b) of the CAT NMS Plan states that ''[s]ubject to Section 11.2, the Operating Committee shall have discretion to establish funding for the Company, including: (i) establishing fees that the Participants shall pay.'' [98] In addition, the purpose of the CAT is solely for regulatory purposes; it provides a regulatory system to facilitate the performance of the self-regulatory obligations of all the Participants, including the exchanges and FINRA. In contrast, the CT Plan governs the public dissemination of real-time consolidated equity market data for NMS stocks.

g. Impact on Options Versus Equities

CAT LLC believes that the Funding Proposal provides for a fair, reasonable and equitable treatment of the equities and options markets. CAT LLC does not believe that the Funding Proposal would burden inappropriately efficiency, competition or capital formation in how it treats equities and options. As a preliminary matter, unlike other previously proposed fee models,[99] the Funding Proposal does not allocate costs between the equities and options markets; instead, the fee attributable to a transaction in an equity or option security depends on equivalent executed share volume. In addition, the use of equivalent executed share volume is designed to normalize options and equities in the calculation of fees, and to recognize and address the different trading characteristics of different types of securities. Recognizing that Listed Options trade in contracts rather than shares, the Funding Proposal would count executed equivalent share volume differently for Listed Options. Specifically, each executed contract for a transaction in Listed Options would be counted based on the multiplier applicable to the specific Listed Option contract in the relevant transaction (*e.g.,* 100 executed equivalent shares or such other applicable equivalency).

h. Sell-Side and Buy-Side

CAT LLC proposes to charge both the buy-side and sell-side of a transaction in Eligible Securities a CAT fee. The proposal to charge both the buy-side and the sell-side of a transaction is consistent with other types of fees charged to both the buyer and the seller that are common in the industry. As such, CAT LLC believes that the proposal would comply with the requirements of the Exchange Act. For example, the ORF, a fee common to the options exchanges, is one example of a regulatory fee charged to both the buy-side and sell-side of the transaction. For example, the MIAX fee schedule lists the options regulatory fee as applying ''per executed contract side.'' [100] Similarly, under its pricing schedule, Nasdaq PHLX charges an options regulatory fee ''per contract side.'' [101] As set forth in its fee schedule, CBOE EDGX also charges an options regulatory fee to each side of the contract.[102] In addition, the industry is familiar with transaction-based fees charged to both the buyer and the seller by the exchanges and FINRA.[103]

i. Fee Rate Changes Twice per Year for CAT Fees Related to Prospective CAT Costs

CAT LLC proposes to require the calculation of the Fee Rate for CAT Fees related to Prospective CAT Costs twice a year. CAT LLC believes that the proposal to adjust the Fee Rate twice a year, once at the beginning of the year and once during the year, appropriately balances the need to coordinate the Fee Rate with potential changes in the costs and projections with the cost and effort to the industry related to more frequent fee changes.

CAT LLC believes its proposal is in keeping with views expressed by the industry in other contexts regarding the appropriate frequency of regulatory rate changes. For example, in the ORF context, the industry requested that rate changes be limited to twice per year. SIFMA stated in a comment letter on one of the ORF fee proposals that ''[r]ates should only be changed two times per year to reduce operational complexity and reduce risk.'' [104] The exchanges with ORF fees noted that the possibility for fee rate changes only twice per year would also ''better enable [their members] to properly account for ORF charges among their customers.'' [105] In light of these views on the frequency of the rate changes, exchanges with an ORF have limited the fee rate changes to twice a year.[106]

j. Plan Amendment Process for Fee Rate Changes

Under the Funding Proposal, once any Fee Rate has been established by a majority vote of the Operating Committee in accordance with the Funding Proposal set forth in the CAT NMS Plan,[107] each Participant would be required to pay the applicable CAT Fee

[96] *See* 2021 FINRA Annual Financial Report at 43.

[97] Harris Letter at 2.

[98] *See also* Sections 11.2 and 11.3 of the CAT NMS Plan.

[99] *See, e.g.,* 2018 Fee Proposal Release at 1400.

[100] MIAX Options Exchange, Fee Schedule, as of Mar. 3, 2023.

[101] Nasdaq PHLX Rules, Options 7, Section 6(D).

[102] Cboe EDGX Fee Schedule, effective Mar. 1, 2023.

[103] *See, e.g.,* NYSE Price List 2023 for fees charged to both sides.

[104] *See, e.g.,* Letter from Ellen Greene, Managing Director, SIFMA to Vanessa Countryman, Secretary, SEC, re: SIFMA Comment Letter on the Options Regulatory Fee Filings by SR–EMERALD–2019–01 (Apr. 10, 2019) at 5, *https://www.sifma.org/wp-content/uploads/2019/04/MIAX-Emerald-ORF.pdf.*

[105] *See, e.g.,* Securities Exchange Act Rel. 93667 (Oct. 15, 2021).

[106] *See, e.g.,* Cboe BZX Fee Schedule (''The Exchange may only increase or decrease the ORF semi-annually''); MIAX Fee Schedule (The Exchange may only increase or decrease the ORF semi-annually); and BOX Fee Schedule (''The Exchange may only increase or decrease the ORF semi-annually'').

[107] Participants would be required to pay the CAT Fee once the CAT Fee is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

calculated in accordance with the requirements set forth in the CAT NMS Plan (subject to the requirement for the Industry Member CAT Fee to be in effect). CAT LLC does not plan to submit an amendment to the CAT NMS Plan each time that the Fee Rate for the CAT Fee is established or adjusted because of the length of time and burden required to amend the CAT NMS Plan for each adjustment to the Fee Rate. Moreover, CAT LLC believes that it is unnecessary to file a new separate amendment for the Participant CAT Fees each time a new Fee Rate is approved because the CAT NMS Plan would set forth in detail the manner in which the CAT fees are established and the inputs for calculating the specific CAT Fees would be published on the CAT website and included in the Participant fee filings under section 19(b) of the Exchange Act for Industry Member CAT fees. Therefore, the amendments to the Plan for a fee rate change would be redundant and impractical in terms of timing.

CAT LLC proposes to amend the CAT NMS Plan to describe in detail how CAT Fees would be calculated, including the formula for the calculation and the methods for determining the inputs for the calculation (*i.e.,* the budget, projected executed equivalent share volume, executed equivalent shares per transaction). As such, the Participants would be required to calculate the Fee Rate and the related CAT Fees using the proposed formula; this process would be mandatory, including the mid-year Fee Rate change. Moreover, the budgetary and projection inputs to the calculation would be public, including in public fee filings pursuant to section 19(b) of the Exchange. Accordingly, CAT LLC does not believe that a Plan amendment would be necessary each time a new Fee Rate is calculated in accordance with the Plan.

The CAT NMS Plan would require each Participant to pay the proposed CAT Fees determined in accordance with the Funding Proposal. Proposed Section 11.3(a)(ii)(A) sets forth the requirement for Participants to pay the CAT fees. It states that ''[e]ach Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data,'' and that ''[e]ach Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data.'' It further states that ''[t]he CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.'' In addition, proposed paragraph (a) of the Participant fee schedule would state that ''[e]ach Participant shall pay the CAT Fee set forth in Section 11.3(a) of the CAT NMS Plan to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions in the prior month.''

The Participants would be required to follow the requirements set forth in the CAT NMS Plan for establishing and calculating CAT Fees and requiring the payment of the CAT Fees as both a regulatory and contractual matter. Rule 613(h)(1) of Regulation NMS under the Exchange Act states that ''[e]ach national securities exchange and national securities association shall comply with the provisions of the national market system plan approved by the Commission,'' that is, the CAT NMS Plan. Rule 613(h)(2) of Regulation NMS under the Exchange Act states that ''[a]ny failure by a national securities exchange or national securities association to comply with the provisions of the national market system plan approved by the Commission shall be considered a violation of this section.'' Similarly, Rule 608(c) of Regulation NMS under the Exchange Act states that ''[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant.'' Section 3.11 of the CAT NMS Plan reiterates this requirement, stating that ''[e]ach Participant shall comply with . . . the provisions of SEC Rule 613 and of this Agreement, as applicable, to the Participant.'' In addition, each Participant is a signatory to the CAT NMS Plan as a member of the limited liability company. Accordingly, a failure to comply with the requirements of the CAT NMS Plan related to the CAT fees would be a violation of the regulatory obligation to comply with the CAT NMS Plan and a breach of contractual requirements of the CAT NMS Plan.

k. Executed Equivalent Shares for NMS Stocks, Listed Options and OTC Equity Securities

The Funding Proposal uses the concept of executed equivalent shares as the metric for calculating CAT fees for transactions in NMS Stocks, Listed Options and OTC Equity Securities, each of which have different trading characteristics. Under the Funding Proposal, each executed share for a transaction in NMS Stocks would be counted as one executed equivalent share, each executed contract for a transaction in Listed Options would be counted using the contract multiplier applicable to the specific Listed Option in the relevant transaction, and each executed share for a transaction in OTC Equity Securities would be counted as 0.01 executed equivalent shares. CAT LLC believes that the proposed counting methods for each category of security are appropriate, as discussed in detail above in Section A.3.b.ii of this filing.

l. Cost Transparency

i. Cost Transparency and Level of Detail of CAT Costs

CAT LLC provides substantial cost transparency for Past CAT Costs and Prospective CAT Costs, including transparency above and beyond what is required under the CAT NMS Plan, and more than other national market system plans. Such transparency would include cost descriptions in the fee filings made pursuant to section 19(b) of the Exchange Act and Rule 19b-4(f)(2) thereunder, as well as the public availability of CAT financial and budget information.

CAT LLC proposes to require substantial transparency for CAT costs in the fee filings to be made pursuant to section 19(b) of the Exchange Act. For example, Proposed Section 11.3(a)(iii)(B) of the CAT NMS Plan would require such filings for CAT Fees to include, among other things, the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget and the reason for changes in each such line item from the prior CAT Fee filing; and a discussion of how the budget is reconciled to the collected fees. Similarly, Proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan would require such filings for Historical CAT Assessments to include, among other things, a brief description of the amount and type of Historical CAT Costs, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees,

change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs.

CAT LLC provides substantial additional financial information regarding the operation of the CAT as required by the CAT NMS Plan. For example, CAT LLC currently makes detailed financial information about the CAT publicly available. Section 9.2(a) of the CAT NMS Plan requires CAT LLC to maintain a system of accounting established and administered in accordance with GAAP and requires ''all financial statements or information that may be supplied to the Participants shall be prepared in accordance with GAAP (except that unaudited statements shall be subject to year-end adjustments and need not include footnotes).'' Section 9.2(a) of the CAT NMS Plan also requires the Company to prepare and provide to each Participant ''as soon as practicable after the end of each Fiscal Year, a balance sheet, income statement, statement of cash flows and statement of changes in equity for, or as of the end of, such year, audited by an independent public accounting firm.'' The CAT NMS Plan requires that this audited balance sheet, income statement, statement of cash flows and statement of changes in equity be made publicly available. Among other things, these financial statements provide operating expenses, including technology, legal, consulting, insurance, professional and administration and public relations costs. CAT LLC also maintains a dedicated web page on the CAT NMS Plan website that consolidates its annual financial statements in a public and readily accessible place.[108] The Company's annual financial statements from inception in 2017 through 2021 are currently available on the CAT website.

In addition to providing financial information required under the CAT NMS Plan and otherwise, CAT LLC also has voluntarily determined to provide more financial transparency to the public regarding its costs. For example, CAT LLC publicly provides its annual operating budget as well as periodically provides updates to the budget that occur during the year. CAT LLC includes such budget information on a dedicated web page on the CAT NMS Plan website to make it readily accessible to the public, like the CAT financial statements. CAT LLC also has held webinars providing additional detail about CAT costs and about potential alternative funding models for the CAT, and commenters submitted questions and comments on the webinars.[109]

ii. Composition and Transparency of Past CAT Costs

CAT LLC also provides detailed disclosures regarding Past CAT Costs. The Historical Fee Rate for the Historical CAT Assessment would be calculated based on actual past costs incurred by the CAT (except for certain costs that CAT LLC has determined to exclude from the calculation), rather than budgeted costs. The actual costs for prior to 2022 are set forth in detail in the audited financial statements for the Company and its predecessor CAT NMS, LLC, which are available on the CAT website.[110] In addition, the following describes in detail the Historical CAT Costs for prior to 2022. These Historical CAT Costs figures are being provided in this filing for transparency purposes only. The Participants expect to describe these costs in the relevant fee filings that the Participants submit pursuant to section 19(b) under the Exchange Act and Rule 19b–4(f)(2) thereunder regarding Historical CAT Assessments.

A. Historical CAT Costs Incurred Prior to June 22, 2020 (*i.e.,* Pre-FAM Costs)

The Participants expect to propose that Historical CAT Costs would include costs incurred by CAT prior to June 22, 2020 and already funded by the Participants, excluding Excluded Costs (described further below). The Participants expect to propose that the Historical CAT Costs would include costs for the period prior to June 22, 2020 of $143,919,521. The Participants expect to propose that Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($47,973,174) and CEBSs paying one-third ($47,973,174). The following table breaks down the Historical CAT Costs for the period prior to June 22, 2020 into the categories set forth in Proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for period prior to June 22, 2020
Capitalized Developed Technology Costs and Transition Fee*	$71,475,941
Technology Costs:	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	143,919,521

* The non-cash amortization of these capitalized developed technology costs of $2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.

B. CAT Costs Incurred in Period 1

The Participants expect to propose that Historical CAT Costs would include costs incurred by CAT and already funded by Participants during FAM Period 1, which covers the period from June 22, 2020–July 31, 2020. The Participants expect to propose that the Historical CAT Costs for Period 1 are $6,377,343. The Participants expect to propose that Participants would remain responsible for one-third of this cost (which they have previously paid) ($2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($2,125,781) and CEBSs paying one-third ($2,125,781). The following table breaks down the Historical CAT Costs for Period 1 into the categories set forth in Proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for period 1
Capitalized Developed Technology Costs*	$1,684,870
Technology Costs:	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	.....
Legal	481,687
Consulting	137,209
Insurance	.....
Professional and administration	69,077

[108] *See* CAT Audited Financial Statements, *https://www.catnmsplan.com/audited-financial statements.*

[109] *See, e.g.,* CAT LLC Webinar, CAT Costs (Sept. 21, 2021), *https://www.catnmsplan.com/events/catcostsseptember-21-2021;* CAT LLC Webinar, CAT Funding (Sept. 22, 2021), *https://www.catnmsplan.com/events/catfundingseptember-22-2021;* and CAT LLC Webinar, CAT Funding (Apr. 6, 2022), *https://www.catnmsplan.com/events/cat-funding.*

[110] The audited financial statements for CAT NMS, LLC and Consolidated Audit Trail, LLC are available at *https://www.catnmsplan.com/audited-financial-statements.*

Operating expense	Historical CAT costs for period 1
Public relations	7,700
Total Operating Expenses	6,377,343

* The non-cash amortization of these capitalized developed technology costs of $362,121 incurred during Period 1 have been appropriately excluded from the above table.

C. CAT Costs Incurred in Period 2

The Participants expect to propose that Historical CAT Costs would include costs incurred by CAT and already funded by Participants during FAM Period 2, which covers the period from August 1, 2020–December 31, 2020. The Participants expect to propose that the Historical CAT Costs for Period 2 are $42,976,478. The Participants expect to propose that Participants would remain responsible for one-third of this cost (which they have previously paid) ($14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($14,325,492.70) and CEBSs paying one-third ($14,325,492.70). The following table breaks down the Historical CAT Costs for Period 2 into the categories set forth in Proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for period 2
Capitalized Developed Technology Costs*	$6,761,094
Technology Costs:	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The non-cash amortization of these capitalized developed technology costs of $1,892,505 incurred during Period 2 have been appropriately excluded from the above table.

D. CAT Costs Incurred in Period 3

The Participants expect to propose that Historical CAT Costs would include costs incurred by CAT and already funded by Participants during FAM Period 3, which covers the period from January 1, 2021–December 31, 2021. The Participants expect to propose that the Historical CAT Costs for Period 3 are $144,415,268. The Participants expect to propose that Participants would remain responsible for one-third of this cost (which they have previously paid) ($48,238,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third ($48,238,423) and CEBSs paying one-third ($48,238,423). The following table breaks down the Historical CAT Costs for Period 3 into the categories set forth in Proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for period 3
Capitalized Developed Technology Costs*	$10,763,372
Technology Costs:	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The non-cash amortization of these capitalized developed technology costs of $5,108,044 incurred during Period 3 have been appropriately excluded from the above table.

E. Excluded Costs

The Participants expect to propose that Historical CAT Costs would not include two categories of CAT costs (''Excluded Costs''): (1) $48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018, and (2) $14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor. The Participants expect to propose that the Participants would remain responsible for 100% of these costs, which total $63,624,299. CAT LLC believes that the exclusions of these costs addresses concerns previously expressed by commenters about costs incurred related to the period of the operation of the Initial Plan Processor.

First, the Participants expect to propose that Historical CAT Costs would exclude all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants expect to propose that these costs are $48,874,937. The Participants expect to propose that the Participants would remain responsible for 100% of this $48,874,937 in costs. The following table breaks down these costs into the categories set forth in Proposed Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018
Capitalized Developed Technology Costs	$37,852,083
Technology Costs:	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

Second, the Participants expect to propose that Historical CAT Costs would not include $14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. The Participants expect to propose that Participants would remain responsible for 100% of the $14,749,362 of these costs.

Accordingly, the Participants expect to propose that Historical CAT Costs would exclude a total of $63,624,299 of prior CAT costs, and the Participants would remain responsible for 100% of these costs.

iii. Alternative Transparency Proposals

CAT LLC believes that its proposed methods of cost transparency will provide Industry Members and other interested parties with detailed information about the CAT and the CAT fees. CAT LLC does not believe that additional transparency measures, such as a mechanism to allow for the review of budget information prior to a fee filing, or an independent cost review mechanism, are necessary or appropriate.

A. Budget Disclosure Prior to Fee Filings

CAT LLC does not believe that it is necessary to add a requirement to the CAT NMS Plan to provide Industry Members and other members of the public with an opportunity to review the budget that would be included in

the SRO fee filings prior to such filings. CAT LLC is currently providing CAT budget information to the public on a continuing basis. CAT LLC publicly provides the annual operating budget for the CAT LLC as well as regular updates to the budget that occur during the year. This budget information is readily accessible to the public on a dedicated web page on the CAT NMS Plan. CAT LLC does not just provide the annual budget, or the mid-year budget, the two budgets that would be necessary for the fee filings; it also provides other updates each year. Accordingly, Industry Members and other members of the public will have the opportunity to review regular updates of the budget more often than is necessary for the fee filings. Such transparency would allow Industry Members and other members of the public to understand the budget and changes thereto throughout the year. Moreover, the fee filing process under section 19(b) of the Exchange Act provides the public with the opportunity to review the budgeted CAT costs that CAT LLC would seek to recover via the CAT Fees.

B. Independent Cost Review Mechanism

CAT LLC also does not believe that it would be necessary or appropriate to include an independent review mechanism for the cost of proposed CAT expenditures. First, as a preliminary matter, unlike the Commission, CAT LLC is not a governmental entity, with a responsibility to the taxpaying public. It is a private entity subject to the regulatory requirements of the Exchange Act. Second, such a budget review process is unnecessary as any CAT fees proposed to be established pursuant to the CAT NMS Plan are already subject to the existing, well-established review practices under Rule 608 of Regulation NMS under the Exchange Act and section 19(b) of the Exchange Act and Rule 19b–4 thereunder. Under those provisions, CAT fees must be filed with the SEC, thereby providing transparency and an opportunity for comment by the public, and may only be implemented if they satisfy the requirements of the Exchange Act. Third, the SEC has the ability to request budget and financial information from CAT LLC to the extent that it believes that such additional information is necessary for it to evaluate any CAT fee proposals.

m. Allocation of Past CAT Costs to Participants: Pro Rata Versus Use of Funding Proposal

The Participants have been responsible for all costs related to the CAT to date, and Industry Members have not paid any of the costs to date. Accordingly, under the Funding Proposal, the Participants would not be required to pay a CAT fee related to Past CAT Costs in addition to prior payments. The two-thirds of the Historical CAT Costs collected from Industry Members would be allocated to the Participants pro rata, based on the outstanding amounts due under the notes to the Participants for repayment of outstanding loan notes to the Company. The one-third of Historical CAT Costs that are not allocated to Industry Members would not be allocated to the Participants pursuant to the Funding Proposal based on executed equivalent shares. Instead, such Historical CAT Costs would be allocated to the Participants pro rata based on the outstanding amounts due under the notes (as discussed further below in Section A.9.n of this filing). CAT LLC entered into the loans with the Participants pursuant to its authority under the CAT NMS Plan as approved by the SEC to pay for CAT costs, and, as such, the loans and their repayment terms are consistent with the Exchange Act and Rule 608 of Regulation NMS. The terms of the loans do not need to satisfy the requirements of the funding model set forth in Article XI of the CAT NMS Plan.

Section 3.9 of the CAT NMS Plan states that ''[i]f the Company requires additional funds to carry out its purposes, to conduct its business, to meet its obligations, or to make any expenditure authorized by this Agreement, the Company may borrow funds from such one or more of the Participants, or from such third party lender(s), and on such terms and conditions, as may be approved by a Supermajority Vote of the Operating Committee.'' As the Company—CAT LLC—did not have a source of revenue to fund its activities without a funding model approved by the SEC, CAT LLC determined to borrow funds from the Participants on terms approved by a Supermajority Vote of the Operating Committee. After this vote, CAT LLC entered into loan agreements with the Participants to cover CAT costs. The terms of the loan agreements dictate that repayment of the notes will be pro rata, based on the outstanding amounts loaned to CAT LLC. Accordingly, CAT LLC is obligated by contract, approved in accordance with the terms of the CAT NMS Plan, to repay the notes pro rata, not by another method.

Moreover, Section 3.8 of the CAT NMS Plan states that ''[e]xcept as may be determined by the unanimous vote of all the Participants or as may be required by applicable law, no Participant shall be obligated to contribute capital or make loans to the Company.'' The Participants voluntarily have agreed to provide loans to CAT LLC under the agreed upon terms to fund the CAT until a funding model is approved. Without a unanimous vote of the Participants, however, CAT LLC cannot require the Participants to make a new loan to CAT LLC. Accordingly, without the agreement of the Participants, the loans must be repaid in accordance with their terms.

n. Sufficient Detail Regarding Pro Rata Allocation of Past CAT Costs to Participants

Further with regard to the pro rata allocation of Past CAT Costs, the manner in which the loans are repaid are governed by the loan agreements between CAT LLC and the Participants, as approved by CAT LLC. The following provides additional detail as to the allocation of Past CAT Costs to Participants in accordance with the loans to CAT LLC.

Pending SEC approval of CAT fees to fund the CAT, the Participants voluntarily determined to fund the development and operation of the CAT through quarterly loans to CAT LLC. The Participants determined to use the market share, tier-based funding model applicable to Execution Venues described in the proposed amendment to the CAT NMS Plan submitted to the SEC on December 11, 2017 (without including ATSs as Equity Execution Venues) to allocate loan amounts among Participants (''Tiered Market Share Proposal'').[111] As described in that proposal, each Equity Execution Venue is placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue is placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share is determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA OTC reporting facility are discounted. Similarly, market share for Options Execution Venues is determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. The tiers are

[111] *See* 2018 Fee Proposal Release.

refreshed on a quarterly basis in accordance with the Tiered Market Share Proposal.

Each of the Participants voluntarily have loaned CAT LLC funds in amounts in accordance with the Tiered Market Share Proposal to cover Past CAT Costs. Accordingly, under the Funding Proposal, the Participants propose to be reimbursed for two-thirds of the Historical CAT Costs pro rata based on the outstanding amounts loaned to CAT LLC pursuant to the Tiered Market Share Proposal, as this is what is required under the loan contract between CAT LLC and the Participants. Correspondingly, for the remaining one-third of the Historical CAT Costs that are not reimbursed via the Historical CAT Assessment, the Participants propose to remain responsible for the amounts loaned to CAT LLC pursuant to the Tiered Market Share Proposal. The Participants' one-third share of the Historical CAT Costs would be paid by the cancellation of the loans on a pro rata basis. In addition, for any Past CAT Costs that are excluded from Historical CAT Costs, the Participants propose to remain responsible for the amounts loaned to CAT LLC pursuant to the Tiered Market Share Proposal as well. These excluded costs also would be paid by cancellation of the loans on a pro rata basis.

o. Past CAT Costs: Collected From Current Versus Past Industry Members and Use of Prior Month's Transactions

CAT LLC believes that Historical CAT Assessments are appropriately assessed to current Industry Members based on current market activity. CAT LLC does not believe that Historical CAT Assessments should be charged to Industry Members that were active at the time when the Past CAT Costs were incurred and based on trading activity from the time when the Past CAT Costs were incurred.

CAT LLC believes that it is appropriate to collect the Historical CAT Assessments from current Industry Members based on current market activity because current market participants are the beneficiaries of the regulatory value provided by the CAT to the securities markets. The SEC has emphasized that the CAT provides a benefit to all market participants,[112] and, therefore, current Industry Members are benefitting from the efforts to create and operate the CAT.

In addition, the approach recognizes the many practical difficulties of imposing fees retroactively on Industry Members' market activity from the past, sometimes years in the past as the relevant recovery period extends to 2012. For example, one of the practical difficulties may include the fact that some Industry Members that would be subject to such a retroactive fee may no longer be in business or no longer registered as a broker-dealer that is subject to the jurisdiction of the Participants or SEC. Indeed, this is likely to be a substantial issue. For example, in the SEC's approval order of the CAT NMS Plan, the SEC used an estimate of 1,800 broker-dealers subject to CAT reporting for its cost estimates.[113] However, the number of current Industry Members has greatly diminished from these early estimates to approximately 1,100.[114] Therefore, at least approximately 40% of the broker-dealers that may have been subject to CAT reporting in 2012 are no longer CAT Reporters.

Another practical issue involves the difficulty of accurately determining the transactions in Eligible Securities of the Industry Member for the past decade that would be subject to CAT fees. Because the recovery period for Past CAT Costs spans a period in which the CAT was not in existence yet, as well as periods in which CAT reporting was being phased in, the CAT may not have any record of relevant transactions from earlier periods, and it may not have a complete record of the relevant transactions for later periods. The SEC anticipated the recovery of CAT fees after such costs were incurred, as it contemplated the recovery of CAT costs for the creation of the CAT as well as its implementation and maintenance.[115]

Moreover, imposing retroactive fees for past market activity could raise fairness issues. For example, because the fee would be retroactive, market participants could not have taken into consideration the CAT fee when they decided to enter into the transactions in the past. In addition, given the passage of time, past CAT Reporters, particularly small CAT Reporters, may not be in a position to pay a fee related to earlier market activity.[116]

In addition, CAT LLC notes that the SEC has approved similar funding practices with regard to new Participants for the CAT as well as new participants for other national market system plans. In each case, the new participant is required to pay a fee to join the plan, and the fee is based on past costs for creating, implementing and maintaining the plan at issue.[117] As a result, a new participant would be required to pay a fee for costs incurred in the past by the relevant plan. For example, Section 3.3 of the CAT NMS Plan states that, to become a new Participant to the CAT NMS Plan, the applicant must:

> pay a fee to the Company in an amount determined by a Majority Vote of the Operating Committee as fairly and reasonably compensating the Company and the Participants for costs incurred in creating, implementing, and maintaining the CAT, including such costs incurred in evaluating and selecting the Initial Plan Processor and any subsequent Plan Processor and for costs the Company incurs in providing for the prospective Participant's participants in the Company, including after consideration of the factors identified in Section 3.3(b) (the ''Participation Fee'').

As this provision indicates, new CAT Participants are required to contribute to paying for costs incurred since the inception of the CAT. Indeed, the costs related to evaluating and selecting the Initial Plan Processor were incurred in 2017 and before.[118] For example, a CAT Participant applicant in 2023 may be required to pay a fee that reflects CAT costs incurred years ago. Similarly, the Funding Proposal would require current Industry Members to pay a share of CAT costs from years ago.

p. Budgeted Versus Incurred Costs

Under the Funding Proposal, the budgeted CAT costs set forth in the annual operating budget would be used to determine the Fee Rate for CAT Fees related to Prospective CAT Costs. The budgeted CAT costs would comprise estimated fees, costs and expenses to be reasonably incurred by the Company for the development, implementation and operation of the CAT during the year,

[112] *See generally* Rule 613 Adopting Release.

[113] CAT NMS Plan Approval Order at 84862.

[114] An average of 1,124 unique CAT Reporters sent transaction data to the CAT from July 1, 2022 to August 8, 2022.

[115] *See, e.g.,* Rule 613(a)(1)(vii)(D) of Regulation NMS under the Exchange Act.

[116] CAT LLC notes, however, that there has been substantial continuity in the largest Industry Members over time. For the illustrative example, the top 10 firms in terms of equivalent executed shares in December 2022 are allocated more than half (52%) of the total Industry Member CAT costs; eight of those 10 firms were also ranked in the top 10 throughout 2021. The remaining two were ranked 14th and 15th, respectively. Similarly, of the top 30 firms in December 2022 (representing an allocation of 82% of the total Industry Member CAT costs), all but three ranked in the top 30 throughout 2021. The three exceptions were ranked at 31, 33 and 40 in 2021. Furthermore, of the top 10 firms by CAT record volume year to date in 2023, 7 were also top 10 reporters by message volume in 2020. The other three rose from ranks 17, 18, and 35. Of the top 30 firms by CAT record volume year to date in 2023, 25 were in the top 30 reporters of 2020.

[117] *See, e.g.,* Section III(b) of the CTA Plan; Section VIII of the UTP Plan.

[118] Letter from Participants, to Brent J. Fields, Secretary, SEC re: Selection of Plan Processor for the National Market System Plan Governing Consolidated Audit Trail (Jan. 18, 2017).

which would include costs for the Plan Processor, insurance, and third-party support, as well as an operational reserve. CAT LLC does not propose to use costs already incurred in calculating the CAT Fees.

CAT LLC believes that using budgeted CAT costs, rather than CAT costs already incurred, is critical to ''build[ing] financial stability to support the Company as a going concern.'' [119] Using budgeted CAT costs to determine the Fee Rate would allow CAT LLC to collect fees before bills become payable. If, however, CAT Fees are only collected after bills become payable, then the Participants would be required to continue to fund 100% of CAT costs to pay the bills as they come due. Making the Participants responsible for all of the CAT costs upfront, rather than one-third of the CAT costs, would change the proposed model in a significant manner.

Requiring the calculation of the Fee Rate based on incurred CAT costs, rather than budgeted CAT costs would only be necessary if budgeted and incurred CAT costs were likely to diverge. However, the Funding Proposal has been designed to address this concern. As proposed, CAT LLC would be required to calculate the Fee Rate each year based upon the budget for the upcoming year, and to adjust the fee rate mid-year to reflect changes in the budgeted or actual CAT costs or the projected or actual executed equivalent share volume. Accordingly, CAT LLC would be required to adjust CAT Fees twice a year to ensure that they are closely aligned with CAT costs. Moreover, when establishing the annual budget or its mid-year adjustment, CAT LLC would adjust the budget to reflect any surplus or deficit in CAT Fees collected during the prior period.

In addition, the CAT NMS Plan requires that the Company operate on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses would be treated as an operational reserve to offset future fees and would not be distributed to the Participants as profits. To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, CAT LLC proposes to limit the size of the reserve to not more than 25% of the annual budget. To the extent that collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees.[120] Furthermore, CAT LLC is set up as a business league to mitigate concerns that CAT LLC's earnings could be used to benefit individual Participants.[121]

q. Continuous Fees Versus Sunsetting Fees

CAT LLC does not propose to require the proposed CAT Fees related to Prospective CAT Costs to sunset automatically; instead, a CAT Fee would continue until a new CAT Fee is in place in accordance with the requirements of the CAT NMS Plan and section 19(b) of the Exchange Act. CAT LLC believes that it is critical that a CAT Fee remain in place at all times. Accordingly, CAT LLC proposes to add Section 11.3(a)(i)(A)(III) of the CAT NMS Plan to clarify that CAT Fees related to Prospective CAT Costs do not sunset automatically; such CAT Fees would remain in place until new CAT Fees with a new Fee Rate is in effect.

The financial viability of the CAT would be put at risk without a constant source of revenue. CAT LLC pays various bills, including technology bills, on a monthly basis. Accordingly, even short delays in the implementation of new CAT Fees after the sunsetting of a prior CAT Fee may have a deleterious effect on the operation of the CAT. Indeed, adopting sunsetting fees would contradict the funding principle of seeking to ''build financial stability to support the Company as a going concern.'' [122]

Moreover, CAT LLC does not believe that a sunsetting requirement is necessary to ensure that the CAT Fees are closely coordinated with Prospective CAT costs. CAT LLC has proposed a comprehensive, multi-pronged approach to ensure that the CAT Fees are closely tied to CAT costs. First, CAT LLC will be required to calculate the Fee Rates for the CAT Fees based on budgeted CAT costs. In addition, CAT LLC will be required to calculate the Fee Rate twice a year to determine whether the Fee Rate has changed due to changes in the budgeted or actual costs or actual or projected executed equivalent share volume, and to make a fee filing twice a year to reflect this calculation. Accordingly, the Fee Rate would be required to be updated twice a year, thereby ensuring the CAT Fees are closely tied to CAT costs.

Second, the CAT NMS Plan requires that the Company operate on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses would be treated as an operational reserve to offset future fees and would not be distributed to the Participants as profits. To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' Moreover, CAT LLC proposes to amend the CAT NMS Plan to limit the reserve to no more than 25% of the annual budget and to clarify that CAT fees collected in excess of the CAT costs, including the reserve, will be used to offset future fees.[123]

Third, CAT LLC proposes to amend the CAT NMS Plan to require Participants to provide significant details in their fee filings regarding Industry Member CAT Fees. Proposed paragraph (a)(iii)(B) of Section 11.3 of the CAT NMS Plan would state that, ''[w]hen the Participants file with the SEC pursuant to section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the Fee Rate that the Operating Committee approved in accordance with paragraph (a) of this Section 11.3,'' such filings would be required to include (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT Fee filing; (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or

[119] Section 11.2(f) of the CAT NMS Plan.

[120] *See* Proposed 11.1(a)(ii) of the CAT NMS Plan.

[121] To qualify as a business league under Section 501(c)(6) of the Internal Revenue Code, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual.'' As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' CAT NMS Plan Approval Order at 84793.

[122] Section 11.2(f) of the CAT NMS Plan.

[123] *See* Proposed Section 11.1(a)(i) and (ii) of the CAT NMS Plan.

remainder of the year, as applicable), and a description of the calculation of the projection. This detail would describe how the Fee Rate was calculated and explain how the budget used in the calculation is reconciled to the collected fees. Such detailed information would provide Industry Members and other interested parties with a clear understanding of the calculation of the CAT fees and their relationship to CAT costs.

r. Conflicts of Interest

CAT LLC believes that the current process for developing the CAT funding model appropriately addresses potential conflicts of interest related to CAT fees. The CAT NMS Plan, as approved by the SEC, adopts various measures to protect against potential conflicts issues raised by the Participants' fee-setting authority, including, but not limited to, the fee filing requirements under the Exchange Act and operating the CAT on a break-even basis. CAT LLC believes that these and other measures address potential conflicts of interest related to CAT fees.

s. Effect on Efficiency, Competition or Capital Formation

CAT LLC believes that the Funding Proposal would have a positive impact on efficiency, competition and capital formation. The Funding Proposal is designed to provide a predictable revenue stream sufficient to cover CAT costs each year. In doing so, the Funding Proposal would be designed to maintain the CAT as a going concern financially. By providing for the financial viability of the CAT, the Funding Proposal would allow the CAT to provide its intended benefits. For example, the CAT is intended to provide significant improvements in efficiency related to how regulatory data is collected and used. In addition, by providing enhanced regulatory oversight and surveillance, the CAT could result in improvements in market efficiency by deterring violative activity. Similarly, the CAT is intended improve capital formation by improving investor confidence in the market due to enhancements in surveillance.

In addition, the Funding Proposal would not impose an inappropriate burden on competition. The Funding Proposal would operate in a manner similar to the funding models employed by the SEC and the Participants related to section 31 of the Exchange Act, the FINRA TAF and the ORF. These fees are long-standing and have been approved by the Commission as satisfying the requirements under the Exchange Act, including not imposing a burden on the competition that is not necessary or appropriate under the Exchange Act. In addition, the Funding Proposal avoids potentially burdensome fees for market makers or other market participants based on message traffic. Furthermore, the Funding Proposal addresses the specific trading characteristics of Listed Options and OTC Equity Securities to avoid adverse effects of the trading of those instruments. For example, the Funding Proposal includes the discounting of transactions involving OTC Equity Shares which, given the volume of shares typically involved in such securities transactions, otherwise may result in disproportionate fees to market participants engaging in transaction in these securities.

The Funding Proposal also would not unfairly burden FINRA or any of the exchanges. The Funding Proposal is designed to be neutral as to the manner of execution and place of execution. The CAT fees would be the same regardless of whether the transaction is executed on an exchange or in the over-the-counter market. All Participants are self-regulatory organizations that have the same regulatory responsibilities under the Exchange Act. Their usage of CAT Data will be for the same regulatory purposes. By treating each Participant the same, the CAT fees would not become a competitive issue by and among the Participants.

CAT LLC does not believe that this proposal would unfairly burden CEBBs and CEBSs. Such a transaction-based fee is a type of fee that is currently used and well-known in the securities markets. For example, SRO members regularly pay transaction-based fees. As a result, the CAT fees could be paid by Industry Members without requiring significant and potentially costly changes. Moreover, the CEBBs and CEBSs could determine, but would not be required, to pass their CAT fees through to their customers, who, in turn, could pass their CAT fees to their customers, until the fee is imposed on the ultimate participant in the transaction. With such a pass through, the CEBBs and CEBSs would not ultimately incur the cost of all CAT fees related to their transactions.

t. Straightforward Approach

One advantage of the Funding Proposal is that the approach is simple, straightforward and easy to understand. Using the predetermined Fee Rate or Historical Fee Rate, CAT LLC would calculate CAT fees by multiplying the number of executed equivalent shares in each Participant, CEBB or CEBS's transactions in Eligible Securities by the Fee Rate or Historical Fee Rate (as applicable) and one-third. The values necessary for the calculation are readily available. The Fee Rates and Historical Fee Rates would be publicly available, and Participants, CEBBs and CEBSs have easy access to their transaction data. Moreover, the two adjustments—one for Listed Options and one for OTC Equity Securities—are similarly straightforward calculations. The Funding Proposal does not include other complexities, such as tiered fees, minimum or maximum fees, excluded types of Eligible Securities or excluded transactions in Eligible Securities.

u. Predictable Fees

The Funding Proposal also provides CAT Reporters with predictable CAT fees. Because the fee rates would be established in advance, Participants, CEBBs and CEBSs can calculate the CAT fee that applies to each transaction when it occurs. Accordingly, CAT Reporters with a CAT fee obligation may easily estimate and validate their applicable fees based on their own trading data. In addition, to the extent any CAT fees are passed on to customers, such customers also can calculate the applicable CAT fee for each transaction.

The predictability of CAT fees under the Funding Proposal improves upon the lack of fee predictability in the Original Funding Model and other message traffic-based models.[124] For example, with potential message traffic models,[125] CAT Reporters would not know the actual per message rate until after the end of the relevant reporting period for which they were assessed the fee and also could not determine in advance the number of messages that may be associated with a given order or the total number of messages, thereby making it difficult for a CAT Reporter to predict a CAT fee related to its market activity. In addition, this lack of predictability related to message-based fees also could complicate efforts by Industry Members to estimate, explain and directly pass message-based fees back to customers, particularly if no trade has occurred.

v. Administrative Ease

The Funding Proposal also would allow for ''ease of billing and other administrative functions.'' [126] As discussed above, the Funding Proposal relies upon a basic calculation using

[124] *See* Securities Exchange Act Rel. No. 92451 (July 20, 2021), 86 FR 40114, 40122 (July 26, 2021) (''2021 Fee Proposal OIP'').

[125] Potential message traffic models, including the 2018 Fee Proposal and 2021 Fee Proposal, and the message traffic only model, are discussed further below in Section A.10 of this filing.

[126] Section 11.2(d) of the CAT NMS Plan.

predetermined fee rate, thereby making the fee determination a straightforward process. In addition, the CAT fees will be collected in a manner similar to the collection process that Industry Members are already accustomed, thereby further reducing the administrative burden on the industry.

w. Equal Treatment of Trading Venues

The Funding Proposal also has the benefit of treating transactions in Eligible Securities equally regardless of the trading venue. The Fee Rate or Historical Fee Rate would be the same regardless of whether a trade was executed on an exchange or in the OTC market, or how the trade ultimately occurred more generally (*e.g.,* in a manner that generated more message traffic). As a result, it would not favor or unfairly burden any one type of trading venue or method.

x. Equitable Treatment of Different Eligible Securities

The Funding Proposal also recognizes and addresses the different trading characteristics of different types of securities. Recognizing that Listed Options trade in contracts rather than shares, the Funding Proposal would count executed equivalent share volume differently for Listed Options. Specifically, each executed contract for a transaction in Listed Options would be counted based on the multiplier applicable to the specific Listed Option contract in the relevant transaction (*e.g.,* 100 executed equivalent shares or such other applicable equivalency). Similarly, in recognition of the different trading characteristics of OTC Equity Securities as compared to NMS Stocks, the Funding Proposal would discount the share volume of OTC Equity Securities when calculating the CAT fees. Specifically, each executed share for a transaction in OTC Equity Securities would be counted as 0.01 executed equivalent shares. As a result, the Funding Proposal would not favor or unfairly burden any one type of product or product type.

y. Contributions by Both Industry Members and Participants

The Funding Proposal would require both Participants and Industry Members to contribute to the funding of the CAT. To date, the Participants have paid the full cost of the creation, implementation and maintenance of the CAT since 2012, pending Commission approval of a fee model. The continued funding of the CAT solely by the Participants was and is not contemplated by the CAT NMS Plan, nor is it a financially sustainable approach. As noted by the SEC, the CAT ''substantially enhance[s] the ability of the SROs and the Commission to oversee today's securities markets,'' [127] thereby benefiting all market participants. The Funding Proposal would require both Participants and Industry Members to contribute to the cost of the CAT, as contemplated by Rule 613 and the CAT NMS Plan.

Rule 613(a)(1)(vii)(D) specifically contemplates Industry Members contributing to the payment of CAT costs. Specifically, this provision requires the CAT NMS Plan to address ''[h]ow the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors.'' In approving Rule 613, the SEC noted that ''although the plan sponsors likely would initially incur the costs to establish and fund the central repository directly, they may seek to recover some or all of these costs from their members.'' [128]

In addition, as approved by the SEC, the CAT NMS Plan specifically contemplates CAT fees to be paid by both Industry Members and Participants. Section 11.1(b) of the CAT NMS Plan states that ''the Operating Committee shall have discretion to establish funding for the Company, including: (i) establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by the Participants.'' [129] The Commission stated in approving the CAT NMS Plan the following:

> The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and, as noted above, the Exchange Act specifically permits the Participants to charge members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[130]

Likewise, the Commission stated that ''the Participants are permitted to recoup their regulatory costs under the Exchange Act through the collection of fees from their members, as long as such fees are reasonable, equitably allocated and not unfairly discriminatory, and otherwise are consistent with Exchange Act standards,'' [131] and noted that ''Rule 613(a)(1)(vii)(D) requires the Participants to discuss in the CAT NMS Plan how they propose to fund the creation, implementation and maintenance of the CAT, including the proposed allocation of estimated costs among the Participants, and *between the Participants and Industry Members.*'' [132]

In its amendments to the CAT NMS Plan regarding financial accountability, the SEC reaffirmed the ability for the Participants to charge Industry Members a CAT fee. Specifically, the SEC noted that the amendments were not intended to change the basic funding structure for the CAT, which may include fees established by the Operating Committee, and implemented by the Participants, to recover from Industry Members the costs and expenses incurred by the Participants in connection with the development and implementation of the CAT.[133]

z. Use of CAT Data

CAT Data would be used to calculate the CAT fees under the Funding Proposal. CAT Data would be used to identify each transaction in Eligible Securities for which a CAT fee would be collected. Specifically, CAT fees will be charged with regard to trades reported to CAT by FINRA via the ADF/ORF/TRF and by the exchanges. In addition, the same transaction data in the CAT Data would be used in the calculation of the projected total executed equivalent share volume for the Fee Rate. Furthermore, the transaction data in the CAT Data provides the identity of the relevant CAT Executing Brokers for each transaction for purposes of the CAT fees. Using CAT Data for the CAT fee calculations provides administrative efficiency, as the data will be accessible via the CAT.

aa. Twelve Month Look Back for Projected Volume

The calculation of the Fee Rate and the Historical Fee Rate requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for the year. CAT LLC proposes to determine this projection based on the total executed equivalent share volume of transactions in Eligible Securities from the prior twelve months. CAT LLC

[127] Rule 613 Adopting Release at 45726.

[128] *Id.* at 45795.

[129] *See also* Sections 11.1(c), 11.2(c), and 11.3(a) and (b) of the CAT NMS Plan.

[130] CAT NMS Plan Approval Order at 84794.

[131] *Id.* at 84795.

[132] *Id.* at 84797 (emphasis added).

[133] Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31329 (May 22, 2020).

determined that the use of the data from the prior twelve months provides an appropriate balance between using data from a period that is sufficiently long to avoid short term fluctuations while providing data close in time to the calculation of the Fee Rate or Historical Fee Rate. In addition, using twelve months, rather a period less than a year, would address the issue of potential seasonality. For example, if the projection were based on a period shorter than one year, the projection could be based on a period that typically has lighter trading volume than the other half of the year, thereby causing the projection to be too low.

bb. Cost Discipline Mechanisms

The reasonableness of the Funding Proposal and the fees calculated under the Funding Proposal are supported by key cost discipline mechanisms for the CAT—a cost-based funding structure, cost transparency, cost management efforts and oversight. Together, these mechanisms help ensure the ongoing reasonableness of the CAT's costs and the level of fees assessed to support those costs.

First, the CAT NMS Plan requires that the Company operate on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses would be treated as an operational reserve to offset future fees and would not be distributed to the Participants as profits.[134] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual.'' [135] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [136] The Internal Revenue Service has determined that the Company is exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code.

Second, the CAT's commitment to reasonable funding in support of its regulatory obligations is further reinforced by the transparency it has committed to provide on an ongoing basis regarding its financial performance. The Company currently makes detailed financial information about the CAT publicly available. Section 9.2(a) of the CAT NMS Plan requires the Operating Committee to maintain a system of accounting established and administered in accordance with GAAP and requires ''all financial statements or information that may be supplied to the Participants shall be prepared in accordance with GAAP (except that unaudited statements shall be subject to year-end adjustments and need not include footnotes).'' Section 9.2(a) of the CAT NMS Plan also requires the Company to prepare and provide to each Participant ''as soon as practicable after the end of each Fiscal Year, a balance sheet, income statement, statement of cash flows and statement of changes in equity for, or as of the end of, such year, audited by an independent public accounting firm.'' The CAT NMS Plan requires that this audited balance sheet, income statement, statement of cash flows and statement of changes in equity be made publicly available. Among other things, these financial statements provide operating expenses, including technology, legal, consulting, insurance, professional and administration and public relations costs. The Company also maintains a dedicated web page on the CAT NMS Plan website that consolidates its annual financial statements in a public and readily accessible place.[137]

In addition, the Company publicly provides the annual operating budget for the Company as well as periodically provides updates to the budget that occur during the year. The Company includes such budget information on a dedicated web page on the CAT NMS Plan website to make it readily accessible, like the CAT financial statements.

CAT LLC also has held webinars providing additional detail about CAT costs and about potential alternative funding models for the CAT.[138] In addition, CAT LLC plans to offer additional webinars on cost and funding for the industry as appropriate going forward. Collectively, these reports and other efforts provide extensive and comprehensive information regarding the CAT's operations with respect to its budgets, revenues, costs, and financial reserves, among other information.

Third, CAT LLC regularly engages in and oversees efforts to reduce CAT costs responsibly while appropriately funding its regulatory obligations. CAT LLC's efforts to manage its expenses responsibly include oversight of the CAT's annual budget, including technology and other expenditures and initiatives. This oversight is informed by key CAT working groups, such as the Technology Working Group, Regulatory Working Group and Interpretive Working Group, each of which brings varied expertise to issues of responsible cost management. In particular, the Operating Committee currently utilizes a Cost Management Working Group to analyze opportunities to manage CAT costs responsibly. In addition, the Plan Processor regularly reviews options to lower compute and storage needs and works with CAT technology providers to provide services in a cost-effective manner. These collective efforts have led to a variety of technological changes to reduce costs.

Fourth, the CAT's funding and operations are subject to the oversight of the Commission. The CAT is extensively supervised by the Commission, including regular and continuous attendance at Operating Committee, Subcommittee and working group meetings. In addition, CAT fees as well as cost management efforts that require an amendment of the CAT NMS Plan are subject to review by the Commission's Division of Trading and Markets, as well as public comment.

10. Alternative Models Considered

CAT LLC has determined to propose the Funding Proposal to fund the CAT for the reasons discussed above. In reaching this conclusion, CAT LLC considered the advantages and disadvantages of a variety of possible alternative funding and cost allocation models for the CAT in detail. After analyzing the various alternatives and considering comments on the

[134] CAT NMS Plan Approval Order at 84792.

[135] 26 U.S.C. 501(c)(6).

[136] CAT NMS Plan Approval Order at 84793.

[137] *See* CAT Audited Financial Statements, *https://www.catnmsplan.com/audited-financial-statements.*

[138] *See, e.g.,* CAT LLC Webinar CAT Costs (Sept. 21, 2021), *https://www.catnmsplan.com/events/cat-costs-september-21-2021;* CAT LLC Webinar, CAT Funding (Sept. 22, 2021), *https://www.catnmsplan.com/events/cat-funding-september-22-2021;* and CAT LLC Webinar, CAT Funding (Apr. 6, 2022), *https://www.catnmsplan.com/events/cat-funding.*

previously proposed models, CAT LLC determined that, although various funding models may be reasonable and appropriate, the Funding Proposal provides a variety of advantages in comparison to the alternatives, and satisfies the requirements of the Exchange Act, including providing for an equitable allocation of reasonable fees among CAT Reporters, not being designed to permit unfair discrimination among CAT Reporters and not imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

a. 2018 Fee Proposal

CAT LLC previously filed a fee proposal in line with the CAT NMS Plan—the 2018 Fee Proposal.[139] Under that model, CAT LLC, among other things, proposed a 75%–25% allocation of CAT costs between Execution Venues (which included Participants and Execution Venue ATSs) and Industry Members (other than Execution Venue ATSs), and required Execution Venues to pay fees based on market share, and Industry Members (other than Execution Venue ATSs) to pay fees based on CAT message traffic.[140]

Each Industry Member (other than Execution Venue ATSs) would be placed into one of seven tiers of fixed fees, based on CAT message traffic in Eligible Securities. Options Market Maker and equity market maker quotes would be discounted when calculating message traffic.

CAT LLC determined to allocate 67% of Execution Venue costs recovered to Equity Execution Venues and 33% to Options Execution Venues. Each Equity Execution Venue would be placed in one of four tiers of fixed fees based on market share, and each Options Execution Venue would be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share would be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. For purposes of calculating market share, the OTC Equity Securities market share of Execution Venue ATSs trading OTC Equity Securities as well as the market share of the FINRA OTC reporting facility would be discounted. Similarly, market share for Options Execution Venues would be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The 2018 Fee Proposal was a very complex model with many interrelated parts, including allocation percentages, discounts for certain market behavior, and multiple tiered fees, and the complexity raised concerns from the Commission regarding its use as the CAT funding model. In addition, in response to the proposal, the industry provided a number of other comments related to the proposal, including comments regarding the proposed allocation of CAT costs between Participants and Industry Members, and the ability of certain market segments to afford the proposed CAT fee.[141]

b. 2021 Fee Proposal

In response to the comments on the 2018 Fee Proposal, CAT LLC determined to revise various aspects of the proposed model, thereby developing the 2021 Fee Proposal.[142] The 2021 Fee Proposal would have continued to require many of the same elements as the 2018 model, including the bifurcated funding approach, and the use of market share and message traffic for allocating costs, as required by the current CAT NMS Plan. The 2021 Fee Proposal, however, proposed to revise the model in certain ways, including (1) dividing the CAT costs between Participants and Industry Members, rather than between Execution Venues and Industry Members (other than Execution Venue ATSs); (2) eliminating the use of tiers in calculating CAT fees for Participants and Industry Members; (3) adopting certain minimum and maximum CAT fees for Industry Members and Participants; (4) revising the allocation between Equity Execution Venues and Options to be 60%–40%; and (5) excluding, rather than discounting, market share in OTC Equity Shares from the calculation of market share for FINRA.

Although the revisions of the 2021 Fee Proposal addressed certain comments on the prior 2018 Fee Proposal, commenters continued to raise issues regarding the proposal. For example, commenters provided feedback regarding the 75%–25% cost allocation between Industry Members and Participants, the 60%–40% cost allocation between Equity Participants and Options Participants, the use of market share and message traffic for allocating costs among Participants and Industry Members, respectively, and the proposed minimum and maximum fees. Noting these and other issues, the SEC determined to institute proceedings to determine whether to disapprove the 2021 Fee Proposal or to approve the proposal with any changes or subject to any conditions the SEC deemed necessary or appropriate after considering public comment.[143] Ultimately, the Operating Committee determined to withdraw the 2021 Fee Proposal.[144]

c. Revenue Funding Model

CAT LLC also considered a model in which all CAT Reporters, including both Industry Members and Participants, would pay fees based solely on revenue. The concept underlying this proposal is that CAT costs would be borne by CAT Reporters based on their ability to pay. Under this model, Industry Member revenue would be calculated based on revenue reported in FOCUS reports, and Participant revenue would be calculated based on revenue information in Form 1 amendments and other publicly reported figures.

CAT LLC did not select this model for various reasons. Under this approach, Participants as a group would only pay approximately 4% of the total CAT costs. Given their role as SROs and their use of the CAT, CAT LLC did not believe that such a small allocation of the CAT costs to the Participants was appropriate. Using revenue also raised a variety of practical issues. For example, questions were raised as to what revenue was appropriate to include in the calculation of revenue for Industry Members. The gross revenue set forth on FOCUS reports was proposed, as it was similar to an existing FINRA regulatory

[139] For a description of the 2018 Fee Proposal, *see* 2018 Fee Proposal Release. CAT LLC later withdrew this proposed amendment. Securities Exchange Act Rel. No. 82892 (Mar. 16, 2018), 83 FR 12633 (Mar. 22, 2018).

[140] In developing the 2018 Fee Proposal, CAT LLC considered many variations of different aspects of that model. For example, CAT LLC evaluated different cost allocations between Industry Members (other than Execution Venue ATSs) and Execution Venues, including 80%–20%, 75%–25%, 70%–30% and 65%–35% allocations, and different cost allocations between Equity and Options Execution Venues. CAT LLC also considered different discounts for equities and options market makers, different numbers of tiers of Industry Members and Execution Venues, different fee levels for each tier, and other aspects of the model.

[141] For a discussion of comments made regarding the Original Funding Model and the 2018 Fee Proposal, *see generally* 2018 Fee Proposal Release.

[142] *See* 2021 Fee Proposal Release.

[143] *See* 2021 Fee Proposal OIP. *See also* Securities Exchange Act Rel. No. 93227 (Oct. 1, 2021), 86 FR 55900 (Oct. 7, 2021).

[144] Letter from Mike Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, SEC (Dec. 8, 2021).

fee.[145] However, questions were raised as to whether revenue unrelated to NMS Securities or OTC Equity Securities, or otherwise unrelated to the CAT, should be included for calculation of the CAT fee. Eliminating revenue unrelated to CAT-related activity would have been difficult or impossible. In addition, the lack of a uniform approach to calculating revenue for the Participants could raise inequities in the collection of a CAT fee.

To address the issues regarding the 96%–4% allocation and the calculation of the Participant revenue in the straight revenue model described above, CAT LLC considered an alternative version of the revenue model in which the CAT costs would be allocated between Industry Members and Participants based on a set percentage (*e.g.,* 75%–25%) and the Industry Member allocation would be allocated among Industry Members based on revenue and the Participant allocation would be allocated among Participants based on market share. However, this alternative revenue model failed to address the issues regarding the appropriate revenue calculations for Industry Members.

d. Message Traffic Only Model

CAT LLC considered a funding model in which CAT costs were allocated across all CAT Reporters—both Industry Members and Participants—based on message traffic in the CAT. Specifically, CAT LLC considered eliminating the concepts of a Participant allocation and an Industry Member allocation entirely, and treating Participants and Industry Members the same under the model. The use of message traffic, however, raised issues regarding the predictability of fees. It also introduced complexity to the model, as discounts were necessary for certain types of activity to avoid fees that may adversely impact market making activity and other market activity.

e. Alternative Allocation for the Funding Proposal

The Operating Committee also discussed an alternative funding model that would calculate fees in a manner similar to the Funding Proposal, but would allocate the fee to one Industry Member, the CEBS, rather than allocating one-third of the fees each to the CEBS, the CEBB and the applicable Participant. This allocation would more closely parallel the existing section 31 fee allocation structure that is already in place. This alternative allocation would eliminate complexity from the fee process, including the process of allocating fees among Industry Members and Participants that are likely to be passed through to the ultimate investors, and would provide for a more transparent funding process for investors. Instead of using this approach, CAT LLC determined to allocate costs among the main participants in a transaction and allow those participants to determine whether and how to recover the costs.

f. Sales Value Model

CAT LLC also considered a funding model in which fees would be calculated based on transaction sales values, similar to the method used in the section 31/sales value fee programs. Under this model, the per sales value fee rate would be calculated by dividing the annual CAT budget by the projected annual total industry transaction sales values. The fee would be calculated by multiplying the sales value fee rate by a given trade's sales value. The CEBB, the CEBS and the relevant Participant would each be assessed one-third of the fee, or, in the alternative, the CEBS would be assessed two-thirds of the fee and the relevant Participants would be assessed one-third of the fee. The same rate would apply to all transactions equally, regardless of the type of product in the trade (*i.e.,* NMS Stocks, Listed Options or OTC Equity Securities). Based on an analysis of 2021 data, CAT LLC observed that the sales value model could potentially impose a disproportionate share of the CAT costs on Participants and Industry Members trading NMS Stocks versus Listed Options. In comparison, also based on an analysis of 2021 data, CAT LLC observed that the Funding Proposal would impose an equitable allocation of fees among Participants and Industry Members trading NMS Stocks and Listed Options, as well as OTC Equity Securities.

g. Other Models

CAT LLC also considered other possible funding models. For example, CAT LLC considered allocating the CAT costs equally among each of the Participants, and then permitting each Participant to charge its own members as it deems appropriate. CAT LLC determined that such an approach raised a variety of issues, including the likely inconsistency of the ensuing charges, potential for lack of transparency, and the impracticality of multiple SROs submitting invoices for CAT charges. CAT LLC also discussed the advantages and disadvantages of various alternative models during the development of the CAT NMS Plan, such as a cost allocation based on a strict pro-rata distribution, regardless of the type or size of the CAT Reporters.[146]

11. Satisfaction of Exchange Act and CAT NMS Plan Requirements

The Funding Proposal offers a variety of benefits over the Original Funding Model and satisfies each of the funding principles and other requirements of the CAT NMS Plan, as proposed to be revised herein, as well as the applicable requirements of the Exchange Act for the reasons discussed below and for the reasons discussed in more detail above.

a. Funding Principle: Section 11.2(a) of the CAT NMS Plan

The Funding Proposal satisfies the funding principles set forth in Section 11.2(a) of the CAT NMS Plan. Section 11.2(a) of the CAT NMS Plan requires the Operating Committee, in establishing the funding of the Company, to seek ''to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company.''

First, by adopting a CAT-specific fee tied directly to CAT costs, CAT LLC would be fully transparent regarding the costs of the CAT and how those costs would be allocated among CAT Reporters. The CAT fees would be designed solely to cover CAT costs, and no other regulatory costs. In contrast, charging a general regulatory fee, which might otherwise be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT-related costs only. Such a general regulatory fee could cover a variety of regulatory costs without differentiating those costs related to the CAT.

Second, the Funding Proposal would provide a predictable revenue stream for the Company. The Funding Proposal is designed to collect the annual CAT costs each year, thereby providing for a predictable revenue stream. In addition, to address the possibility of some variability in the collected CAT fees, an unexpected increase in costs or variations from the budgeted costs or projected executed equivalent share volume of transactions in Eligible Securities, the CAT costs covered by the Funding Proposal would include an operational reserve. The operational reserve could be used in the event that

[145] *See* paragraphs (c) and (d) of Section 1 of Schedule A of FINRA's By-Laws regarding FINRA's annual Gross Income Assessment.

[146] For a discussion of alternatives considered in the drafting of the CAT NMS Plan, *see* Appendix C of the CAT NMS Plan at C–88–C–89.

the total CAT fees collected differ from the actual CAT costs. Moreover, the Funding Proposal includes a method for adjusting the calculation of the Fee Rate during the year if there are changes in the projected total volume of transactions in Eligible Securities or the CAT costs.

Third, the Funding Proposal provides for a revenue stream for the Company that is aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company. The total CAT fees to be collected from CAT Reporters are designed to cover the CAT costs. Any surpluses collected would be treated as an operational reserve to offset future fees and would not be distributed to the Participants as profits.[147]

b. Funding Principle: Section 11.2(b) of the CAT NMS Plan

The Funding Proposal satisfies the funding principle set forth in Section 11.2(b) of the CAT NMS Plan, as proposed to be amended herein, which would require the Operating Committee to seek ''to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT.'' As discussed in detail above, the Funding Proposal establishes an allocation of CAT costs among Participants and Industry Members that is consistent with the Exchange Act. In addition, the Funding Proposal provides for an equitable allocation of reasonable dues, is not unfairly discriminatory and does not impose a burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. In addition, the Funding Proposal takes into account the timeline for implementation of the CAT. The CAT fees are designed to cover the CAT costs for each relevant period.

c. Funding Principle: Section 11.2(c) of the CAT NMS Plan

The Funding Proposal satisfies the funding principle set forth in Section 11.2(c) of the CAT NMS Plan, as proposed to be modified herein. Section 11.2(c), as proposed to be modified herein, requires the Operating Committee to seek ''to establish a fee structure in which the fees charged to Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities, and the costs of the CAT.'' The Funding Proposal requires Participants and Industry Members to pay fees based upon the executed equivalent share volume of transactions in Eligible Securities, and the costs of the CAT, as described above.

d. Funding Principle: Section 11.2(d) of the CAT NMS Plan

The Funding Proposal satisfies the funding principle set forth in Section 11.2(d) of the CAT NMS Plan, which requires the Operating Committee to seek ''to provide for ease of billing and other administrative functions.'' The Funding Proposal satisfies this principle in several ways. The Funding Proposal is modeled after the existing section 31-related fee programs, with which the Participants and Industry Members have a longstanding familiarity. The Funding Proposal relies upon a basic calculation using a predetermined fee rate along with an Industry Member or Participant's executed equivalent share volume, thereby making the fee determination a straightforward process.

Furthermore, the Funding Proposal provides CAT Reporters with predictable CAT fees. Because the Fee Rate is established in advance for a relevant time period, Participants, CEBBs and CEBSs know the CAT fee that applies to each transaction when it occurs. Accordingly, Participants, CEBBs and CEBSs are able to easily estimate and validate their applicable fees based on their own trading data. In addition, to the extent any CAT fees are passed on to customers, the customers, too, can calculate the applicable CAT fee for each transaction.

e. Funding Principle: Section 11.2(e) of the CAT NMS Plan

The Funding Proposal satisfies the funding principle set forth in Section 11.2(e) of the CAT NMS Plan, which requires the Operating Committee to seek ''to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality.'' The Funding Proposal would operate in a manner similar to the funding models employed by the SEC and the Participants related to section 31 of the Exchange Act, the FINRA TAF and the ORF. These fees are long-standing, and have been approved by the Commission as satisfying the requirements under the Exchange Act, including not imposing a burden on competition that is not necessary or appropriate under the Exchange Act. In addition, the Funding Proposal avoids potentially burdensome fees for market makers or other market participants based on message traffic. Furthermore, the Funding Proposal addresses the specific trading characteristics of Listed Options and OTC Equity Securities to avoid adverse effects of the trading of those instruments. For example, the Funding Proposal includes the discounting of transactions involving OTC Equity Shares which, given the volume of shares typically involved in such securities transactions, otherwise may result in disproportionate fees to market participants transaction these securities.

The Funding Proposal also would not unfairly burden FINRA or any of the exchanges. The Funding Proposal is designed to be neutral as to the manner of execution and place of execution. The CAT fees would be the same regardless of whether the transaction is executed on an exchange or in the over-the-counter market. All Participants are SROs that have the same regulatory responsibilities under the Exchange Act. Their usage of CAT Data will be for the same regulatory purposes. By treating each Participant the same, the CAT fees would not become a competitive issue by and among the Participants.

The Funding Proposal also would not unfairly burden CAT Executing Brokers. CAT LLC determined to charge CEBBs and CEBSs because such a fee collection model is currently used and well-known in the securities markets. As a result, the CAT fees could be paid by Industry Members without requiring significant and potentially costly changes. Moreover, the CEBBs and CEBSs would be permitted, but not required, to pass their CAT fees through to their customers, who, in turn, could pass their CAT fees to their customers, until the fee is imposed on the ultimate participant in the transaction. With such a pass through, the CEBBs and CEBSs would not ultimately incur the cost of all CAT fees related to the transactions that they clear.

f. Funding Principle: Section 11.2(f) of the CAT NMS Plan

The Funding Proposal satisfies the funding principle set forth in Section 11.2(f) of the CAT NMS Plan, which requires the Operating Committee to seek ''to build financial stability to support the Company as a going concern.'' CAT LLC believes that the Funding Proposal is structured to collect sufficient funds to pay for the cost of the CAT going forward. In addition, the Funding Proposal would collect an operational reserve for the CAT. This operational reserve is intended to address potential shortfalls in collected CAT fees versus actual CAT costs. Moreover, the Funding Proposal includes a requirement to adjust the Fee Rate during the year in order to address any changes in the projected or actual total volume of transactions in Eligible

[147] CAT NMS Plan Approval Order at 84792.

Securities or the budgeted or actual CAT costs. Furthermore, the Funding Proposal is designed to collect CAT fees continuously so as to provide uninterrupted revenue to pay CAT bills; the CAT Fees related to Prospective CAT Costs are not designed to sunset.

g. Section 11.1(c) of the CAT NMS Plan

The Funding Proposal would satisfy the requirements in Section 11.1(c) of the CAT NMS Plan, as proposed to be modified herein. Section 11.1(c) of the CAT NMS Plan states that ''[t]o fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs.'' The CAT fees are designed to cover the CAT costs for a relevant period. As such, on a going forward basis, they are designed to be imposed close in time to when costs are incurred. In addition, the Historical CAT Assessments are designed to ''take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members.''

Section 11.1(c) of the CAT NMS Plan also requires that ''[a]ny surplus of the Company's resources over its expenses shall be treated as an operational reserve to offset future fees.'' The Company would operate on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses would not be distributed to the Participants as profits. In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[ ] to the benefit of any private shareholder or individual.'' [148] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [149] The Internal Revenue Service has determined that the Company is exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code.

h. Equitable Allocation of Reasonable Fees

The proposed CAT fees provide for the ''equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities necessary or appropriate in furtherance of the purposes of this chapter,'' [150] as required by the Exchange Act. CAT LLC believes that the CAT fees equitably allocate CAT costs between and among Participants and Industry Members. For the reasons discussed above, CAT LLC believes that the allocation of one-third of the CAT costs each to Participants, CEBBs and CEBSs in the Funding Proposal as well as the use of the total equivalent share volume of transactions in Eligible Securities for allocating costs provide for an equitable allocation of CAT costs among CAT Reporters.

CAT LLC also believes that the Funding Proposal would provide for reasonable fees. The transaction-based fees contemplated by the Funding Proposal are a reasonable fee structure. The SROs have a long history of charging transaction-based fees, as transactions are the intended economic goal of the securities markets. In addition to the transaction-based regulatory fees discussed above (*e.g.,* the SROs' section 31-related fees, the FINRA TAF and the ORF), the SROs charge a variety of other types of transaction fees to fund their operations.[151] Indeed, each of the SROs collect transaction-based fees from their members.[152] In each case, the transaction-based fees charged by SROs have been subject to the fee filing process and found to satisfy the requirements of the Exchange Act. Not only is the type of fee reasonable, but the level of the fee is reasonable as well. Although the exact Fee Rate or Historical Fee Rate to be paid for any particular period will be determined at a later date, the illustrative example provides a per-transaction fee rate that is not excessive in comparison to existing transaction fee rates.

i. No Unfair Discrimination

The Funding Proposal is ''not designed to permit unfair discrimination between customers, issuers, brokers, or dealers,'' [153] as required by the Exchange Act. In addition, the Funding Proposal does not unfairly discriminate between Industry Members and Participants, among Industry Members or among Participants. Both Participants and Industry Members would contribute to the cost of the CAT; Participants alone would no longer be required to shoulder the cost burden of the CAT without the contribution of Industry Members. In addition, both Participants and Industry Members would pay a fee based on the executed equivalent share volume of their transactions in Eligible Securities; the type of metric would not vary based on whether the CAT Reporter is an Industry Member or Participant.

Furthermore, the Fee Rate or Historical Fee Rate would be the same regardless of the type of venue a trade was executed on, or how the trade ultimately occurred more generally (*e.g.,* in a manner that generated more message traffic). In addition, the Funding Proposal recognizes the different trading characteristics of Listed Options and OTC Equity Securities as compared to NMS Stocks. The Funding Proposal recognizes that Listed Options trade in contracts rather than shares, and, therefore, counts the executed equivalent shares for Listed Options accordingly. Similarly, in recognition of the different trading characteristics of OTC Equity Securities as compared to NMS Stocks, the Funding Proposal would discount the share volume of OTC Equity Securities when calculating the CAT fees. As a result, the Funding Proposal would not favor or unfairly burden any one type of trading venue, product or product type.

With the elimination of tiers, fees for Industry Members and Participants are directly related to their executed equivalent share volume of their transactions. With tiers, the relationship between a CAT Reporter's share volume and the CAT fee would not have been as direct.

j. No Burden on Competition

The Funding Proposal does ''not impose any burden on competition not necessary or appropriate in furtherance

[148] 26 U.S.C. 501(c)(6).

[149] CAT NMS Plan Approval Order at 84793.

[150] Sections 6(b)(4) and 15A(b)(5) of the Exchange Act.

[151] The SEC has noted that SRO transaction fees account for a significant portion of SRO revenue. Securities Exchange Act Rel. No. 50700 (Nov. 18, 2004), 69 FR 71256, 71271 (Dec. 8, 2004).

[152] *See, e.g.,* NYSE Price List; Nasdaq Price List.

[153] Sections 6(b)(5) and 15A(b)(6) of the Exchange Act.

of the purposes of this chapter,'' [154] as required by the Exchange Act, and it fairly and equitably allocates costs among CAT Reporters. The Funding Proposal would operate in a manner similar to the funding model employed by the SEC and the Participants related to section 31 of the Exchange Act as well as the FINRA TAF [155] and the ORF rules, and these long-standing fees to cover regulatory costs have been approved by the Commission as satisfying the requirements under the Exchange Act, including not imposing a burden on the competition that is not necessary or appropriate under the Exchange Act. Furthermore, the Funding Proposal does not impose a burden on competition for the reasons set forth above, including in Sections A.9.s and A.11.e of this filing above.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

CAT LLC is filing this proposed amendment pursuant to Rule 608(b)(1) of Regulation NMS under the Exchange Act.[156]

D. Development and Implementation Phases

The Participants expect to implement the proposed CAT fees upon approval by the SEC, subject to applicable requirements for the implementation of the CAT fees, including the requirements of section 19(b) of the Exchange Act with regard to Industry Member CAT Fees, the satisfaction of applicable Financial Accountability Milestones as set forth in Section 11.6 of the CAT NMS Plan, and the implementation of the billing and collection system for the CAT fees.

E. Analysis of Impact on Competition

CAT LLC does not believe that the proposed amendment would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. CAT LLC notes that the proposed amendment implements provisions of the CAT NMS Plan approved by the Commission, subject to proposed revisions to the CAT NMS Plan described above, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the CAT NMS Plan. Because all Participants are subject to the Funding Proposal set forth in the proposed amendment, this is not a competitive filing that raises competition issues between and among the Participants. Furthermore, for the reasons discussed above, including in Sections A.11.e and A.11.j of this filing above, CAT LLC does not believe that the Funding Proposal would result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Plan Sponsors in Accordance With Plan

Section 12.3 of the CAT NMS Plan states that, subject to certain exceptions, the CAT NMS Plan may be amended from time to time only by a written amendment, authorized by the affirmative vote of not less than two-thirds of all of the Participants, that has been approved by the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or has otherwise become effective under Rule 608 of Regulation NMS under the Exchange Act. In addition, Section 4.3(a)(vi) of the Plan requires the Operating Committee, by Majority Vote, to authorize action to determine the appropriate funding-related policies, procedures and practices-consistent with Article XI. The Operating Committee has satisfied both of these requirements. In addition, the Funding Proposal was discussed and voted on during the Operating Committee meetings.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Section A of this filing describes in detail how CAT LLC developed the Funding Proposal for the CAT.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Section 11.5 of the CAT NMS Plan addresses the resolution of disputes regarding CAT fees charged to Participants and Industry Members. Specifically, Section 11.5 of the CAT NMS Plan states that:

> [d]isputes with respect to fees the Company charges Participants pursuant to Article XI of the CAT NMS Plan shall be determined by the Operating Committee or a Subcommittee designated by the Operating Committee. Decisions by the Operating Committee or such designated Subcommittee on such matters shall be binding on Participants, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum.

In addition, the Participants adopted rules to establish the procedures for resolving potential disputes related to CAT fees charged to Industry Members.[157]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number 4–698 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 4–698. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room,

[154] Sections 6(b)(8) and 15A(b)(9) of the Exchange Act.

[155] Although the FINRA TAF is designed to cover a subset of the costs of FINRA services (*e.g.,* costs to FINRA of the supervision and regulation of members, including performing examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities) rather than all of FINRA's costs like the CAT, the transaction-based calculation of the FINRA TAF and the proposed CAT fees are similar.

[156] 17 CFR 242.608(b)(1).

[157] *See* Securities Exchange Act Rel. No. 81500 (Aug. 30, 2017), 82 FR 42143 (Sept. 6, 2017).

100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the Participants' offices. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4–698 and should be submitted on or before April 11, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[158]

Dated: March 15, 2023.

Sherry R. Haywood,

Assistant Secretary.

EXHIBIT A

Proposed Revisions to CAT NMS Plan

Additions *italicized*; deletions [bracketed]

* * * * *

Article I

Definitions

* * * * *

''*CAT Executing Broker*'' *means (a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.*

* * * * *

[''Execution Venue'' means a Participant or an alternative trading system (''ATS'') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).]

* * * * *

Article XI

Funding of the Company

Section 11.1. Funding Authority.

(a) On an annual basis the Operating Committee shall approve [an] *a reasonable* operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.

(i) Without limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.

(ii) For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. For the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget). For the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.

(b) Subject to *Section 11.1 and* Section 11.2, the Operating Committee shall have discretion to establish funding for the Company, including: (i) establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by Participants. The Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as ''Consolidated Audit Trail Funding Fees.''

(c) To fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) *reasonably* incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members. Any surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.

(d) Consistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, [assignment of tiers,] resolution of disputes, billing and collection of fees, and other related matters. [For the avoidance of doubt, as part of its regular review of fees for the CAT, the Operating Committee shall have the right to change the tier assigned to any particular Person in accordance with fee schedules previously filed with the Commission that are reasonable, equitable and not unfairly discriminatory and subject to public notice and comment, pursuant to this Article XI. Any such changes will be effective upon reasonable notice to such Person.]

Section 11.2. Funding Principles. In establishing the funding of the Company, the Operating Committee shall seek:

(a) to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company;

(b) to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT [and

[158] 17 CFR 200.30–3(a)(85).

distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon Company resources and operations];

(c) to establish a [tiered] fee structure in which the fees charged to [: (i)] *Participants and* [CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii)] Industry Members[' non-ATS activities] are based upon *the executed equivalent share volume of transactions in Eligible Securities, and the costs of the CAT* [message traffic; and (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members)].

(d) to provide for ease of billing and other administrative functions;

(e) to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and

(f) to build financial stability to support the Company as a going concern.

Section 11.3. Recovery.

(a) *Prospective CAT Costs.* The Operating Committee will establish [fixed] fees *(''CAT Fees'')* to be payable by [Execution Venues] *Participants and Industry Members with regard to CAT costs not previously paid by the Participants (''Prospective CAT Costs'')* as *follows* [provided in this Section 11.3(a)]:

(i) *Fee Rate. The Operating Committee will calculate the Fee Rate for the CAT Fee twice per year, once at the beginning of the year and once during the year as follows.*

(A) General.

(I) For the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the reasonably budgeted CAT costs for the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the year. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(II) During each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year. Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the new Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(III) For the avoidance of doubt, CAT Fees with a Fee Rate calculated as set forth in this paragraph (a)(i) shall remain in effect until the Operating Committee approves a new Fee Rate as described in paragraph (a)(i) and CAT Fees with the new Fee Rate are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(IV) For the avoidance of doubt, the first CAT Fee may commence at the beginning of the year or during the year. If it were to commence during the year, the first CAT Fee would be calculated as described in paragraph (II) of this Section.

(B) Executed Equivalent Shares. For purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows:

(I) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share;

(II) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (i.e., 100 executed equivalent shares or such other applicable multiplier); and

(III) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.

(C) Budgeted CAT Costs. The budgeted CAT costs for the year shall be comprised of all reasonable fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

(D) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities. The Operating Committee shall reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.

(ii) Participant CAT Fees.

(A) CAT Fee Obligation. Each Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data. The CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.

(B) Effectiveness. Each Participant will be required to pay the CAT Fee calculated using the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3 and approved by the Operating Committee only if such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(iii) Industry Member CAT Fees.

(A) CAT Fee Obligation. Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.

(B) Content of Fee Filings. When the Participants file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry

Members calculated using the Fee Rate that the Operating Committee approved in accordance with paragraph (a) of this Section 11.3, such filings shall set forth (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT Fee filing; (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection. The information provided in this Section would be provided with sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.

(C) No Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.

(iv) CAT Fee Details.

(A) Details regarding the calculation of a Participant or CAT Executing Brokers' CAT Fees will be provided upon request to such Participant or CAT Executing Broker. At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

(B) For each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

[(i) Each Execution Venue that: (A) executes transactions; or (B) in the case of a national securities association, has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.]

[(ii) Each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.]

(b) *Past CAT Costs.* The Operating Committee will establish [fixed] *one or more* fees *(each a ''Historical CAT Assessment'')* to be payable by Industry Members *with regard to CAT costs previously paid by the Participants (''Past CAT Costs'') as follows:* [, based on the message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers of fixed fees, based on message traffic. For the avoidance of doubt, the fixed fees payable by Industry Members pursuant to this paragraph shall, in addition to any other applicable message traffic, include message traffic generated by: (i) an ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member.]

(i) *Calculation of Historical Fee Rates.*

(A) General. The Operating Committee will calculate the Historical Fee Rate for each Historical CAT Assessment by dividing the Historical CAT Costs for each Historical CAT Assessment by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period for each Historical CAT Assessment. Once the Operating Committee has approved such Historical Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act such Historical CAT Assessment to be charged to Industry Members calculated using such Historical Fee Rate. Industry Members will be required to pay such Historical CAT Assessment calculated using such Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act.

(B) Executed Equivalent Shares. For purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted in the same manner as set forth in paragraph (a)(i)(B) of this Section 11.3.

(C) Historical CAT Costs. The Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.

(D) Historical Recovery Period.

(I) The length of the Historical Recovery Period used in calculating each Historical Fee Rate will be reasonably established by the Operating Committee based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment; provided, however, no Historical Recovery Period used in calculating the Historical Fee Rate shall be less than 24 months or more than five years.

(II) Notwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected.

(E) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities for Historical Recovery Period. The Operating Committee shall reasonably determine the projected total executed

equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.

(ii) Past CAT Costs and Participants. Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans. Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs.

(iii) *Historical CAT Assessment for Industry Members.*

(A) Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.

(B) Historical CAT Assessment Fee Filings.

(I) Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.

(II) When the Participants file with the SEC pursuant to Section 19(b) of the Exchange Act a Historical CAT Assessment calculated using the Historical Fee Rate that the Operating Committee approved in accordance with paragraph (b) of this Section 11.3, such filing shall set forth (A) the Historical Fee Rate; (B) a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection. The information provided in this Section would be provided with sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.

(III) No Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.

(iv) Historical CAT Assessment Details.

(A) Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

(B) For each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

(c) The Operating Committee may establish any other fees ancillary to the operation of the CAT that it reasonably determines appropriate, including fees: (i) for the late or inaccurate reporting of information to the CAT; (ii) for correcting submitted information; and (iii) based on access and use of the CAT for regulatory and oversight purposes (and not including any reporting obligations).

(d) The Company shall make publicly available a schedule of effective fees and charges adopted pursuant to this Agreement as in effect from time to time. The Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semiannual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.

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APPENDIX B

Fee Schedule

Consolidated Audit Trail Funding Fees for Participants

(a) CAT Fee. Each Participant shall pay the CAT Fee set forth in Section 11.3(a) of the CAT NMS Plan to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions in Eligible Securities in the prior month.

* * * * *

EXHIBIT B

Proposed Revisions to CAT NMS Plan as Proposed To Be Revised in the February 2023 Proposed Partial Amendment

Additions *italicized;* deletions [bracketed]

* * * * *

Article I

Definitions

* * * * *

''CAT Executing Broker'' means (a) with respect to a transaction in an Eligible Security that is executed on an exchange, the Industry Member identified as the Industry Member responsible for the order on the buy-side of the transaction and the Industry Member responsible for the sell-side of the transaction in the equity order trade event and option trade event in the CAT Data submitted to the CAT by the relevant exchange pursuant to the Participant Technical Specifications; and (b) with respect to a transaction in an Eligible Security that is executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, the Industry Member identified as the executing broker and the Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event in the CAT Data submitted to the CAT by FINRA pursuant to the Participant Technical Specifications; provided, however, in those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as CAT Executing Broker for the Buyer and for the Seller.

* * * * *

Article XI

Funding of the Company

Section 11.1. Funding Authority.

(a) On an annual basis the Operating Committee shall approve *[an] a reasonable* operating budget for the Company. The budget shall include the projected costs of the Company, including the costs of developing and operating the CAT for the upcoming year, and the sources of all revenues to cover such costs, as well as the funding of any reserve that the Operating Committee reasonably deems appropriate for prudent operation of the Company.

(i) Without limiting the foregoing, the reasonably budgeted CAT costs shall include technology (including cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs), legal, consulting, insurance, professional and administration, and public relations costs, a reserve and such other cost categories as reasonably determined by the Operating Committee to be included in the budget.

(ii) For the reserve referenced in paragraph (a)(i) of this Section, the budget will include an amount reasonably necessary to allow the Company to maintain a reserve of not more than 25% of the annual budget. To the extent collected CAT fees exceed CAT costs, including the reserve of 25% of the annual budget, such surplus shall be used to offset future fees. For the avoidance of doubt, the Company will only include an amount for the reserve in the annual budget if the Company does not have a sufficient reserve (which shall be up to but not more than 25% of the annual budget). *For the avoidance of doubt, the calculation of the amount of the reserve would exclude the amount of the reserve from the budget.*

(b) Subject to *Section 11.1 and* Section 11.2, the Operating Committee shall have discretion to establish funding for the Company, including: (i) establishing fees that the Participants shall pay; and (ii) establishing fees for Industry Members that shall be implemented by Participants. The Participants shall file with the SEC under Section 19(b) of the Exchange Act any such fees on Industry Members that the Operating Committee approves, and such fees shall be labeled as ''Consolidated Audit Trail Funding Fees.''

(c) To fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. In determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) *reasonably* incurred by the Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT, and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members. Any surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.

(d) Consistent with this Article XI, the Operating Committee shall adopt policies, procedures, and practices regarding the budget and budgeting process, resolution of disputes, billing and collection of fees, and other related matters.

Section 11.2. Funding Principles. In establishing the funding of the Company, the Operating Committee shall seek:

(a) to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and the other costs of the Company;

(b) to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT;

(c) to establish a fee structure in which the fees charged to Participants and Industry Members are based upon the executed equivalent share volume of transactions in Eligible Securities, and the costs of the CAT.

(d) to provide for ease of billing and other administrative functions;

(e) to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and

(f) to build financial stability to support the Company as a going concern.

Section 11.3. Recovery.

(a) Prospective CAT Costs. The Operating Committee will establish fees (''CAT Fees'') to be payable by Participants and Industry Members with regard to CAT costs not previously paid by the Participants (''Prospective CAT Costs'') as follows:

(i) Fee Rate. The Operating Committee will calculate the Fee Rate for the CAT Fee twice per year, once at the beginning of the year and once during the year as follows.

(A) General.

(I) For the beginning of each year, the Operating Committee will calculate the Fee Rate by dividing the reasonably budgeted CAT costs for the year by the *reasonably* projected total executed equivalent share volume of all transactions in Eligible Securities for the year. Once the Operating Committee has approved such Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using such Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(II) During each year, the Operating Committee will calculate a new Fee Rate by dividing the reasonably budgeted CAT costs for the remainder of the year by the *reasonably* projected total executed equivalent share volume of all transactions in Eligible Securities for the remainder of the year. Once the Operating Committee has approved the new Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the new Fee Rate. Participants and Industry Members will be required to pay CAT Fees calculated using this new Fee Rate once such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(III) For the avoidance of doubt, CAT Fees with a Fee Rate calculated as set forth in this paragraph (a)(i) shall remain in effect until the Operating Committee approves a new Fee Rate as described in paragraph (a)(i) and CAT Fees with the new Fee Rate are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(IV) For the avoidance of doubt, the first CAT Fee may commence at the beginning of the year or during the year. If it were to commence during the year, the first CAT Fee would be calculated as described in paragraph (II) of this Section.

(B) Executed Equivalent Shares. For purposes of calculating CAT Fees, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted as follows:

(I) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share;

(II) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Option (*i.e.,* 100 executed equivalent shares or such other applicable multiplier); and

(III) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share.

(C) Budgeted CAT Costs. The budgeted CAT costs for the year shall be comprised of all *reasonable* fees, costs and expenses reasonably budgeted to be incurred by or for the Company in connection with the development, implementation and operation of the CAT as set forth in the annual operating budget approved by the Operating Committee pursuant to Section 11.1(a) of the CAT NMS Plan, or as adjusted during the year by the Operating Committee.

(D) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities. The Operating Committee shall reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each relevant period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.

(ii) Participant CAT Fees.

(A) CAT Fee Obligation. Each Participant that is a national securities exchange will be required to pay the CAT Fee for each transaction in Eligible Securities executed on the exchange in the prior month based on CAT Data. Each Participant that is a national securities association will be required to pay the CAT Fee for each transaction in Eligible Securities executed otherwise than on an exchange in the prior month based on CAT Data. The CAT Fee for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.

(B) Effectiveness. Each Participant will be required to pay the CAT Fee calculated using the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3 and approved by the Operating Committee only if such CAT Fees are in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.

(iii) Industry Member CAT Fees.

(A) CAT Fee Obligation. Each Industry Member that is the CAT Executing Broker for the buyer in a transaction in Eligible Securities (''CAT Executing Broker for the Buyer'' or ''CEBB'') and each Industry Member that is the CAT Executing Broker for the seller in a transaction in Eligible Securities (''CAT Executing Broker for the Seller'' or ''CEBS'') will be required to pay a CAT Fee for each such transaction in Eligible Securities in the prior month based on CAT Data. The CEBB's CAT Fee or CEBS's CAT Fee (as applicable) for each transaction in Eligible Securities will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Fee Rate reasonably determined pursuant to paragraph (a)(i) of this Section 11.3.

(B) Content of Fee Filings. When the Participants file with the SEC pursuant to Section 19(b) of the Exchange Act CAT Fees to be charged to Industry Members calculated using the Fee Rate that the Operating Committee approved in accordance with paragraph (a) of this Section 11.3, such filings shall set forth (A) the Fee Rate; (B) the budget for the upcoming year (or remainder of the year, as applicable), including a brief description of each line item in the budget, including (1) technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration, and (6) public relations costs, a reserve and/or such other categories as reasonably determined by the Operating Committee to be included in the budget, and the reason for changes in each such line item from the prior CAT Fee filing; (C) a discussion of how the budget is reconciled to the collected fees; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the year (or remainder of the year, as applicable), and a description of the calculation of the projection. The information provided in this Section would be provided with sufficient detail to demonstrate that the budget for the upcoming year, or part of year, as applicable, is reasonable and appropriate.

(C) No Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.

(iv) CAT Fee Details.

(A) Details regarding the calculation of a Participant or CAT Executing Brokers' CAT Fees will be provided upon request to such Participant or CAT Executing Broker. *At a minimum, such details would include each Participant or CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.*

(B) For each CAT Fee, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

(b) Past CAT Costs. The Operating Committee will establish one or more fees (each a ''Historical CAT Assessment'') to be payable by Industry Members with regard to CAT costs previously paid by the Participants (''Past CAT Costs'') as follows:

(i) Calculation of Historical Fee Rates.

(A) General. The Operating Committee will calculate the Historical Fee Rate for each Historical CAT Assessment by dividing the Historical CAT Costs for each Historical CAT Assessment by the *reasonably* projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period for each Historical CAT Assessment. Once the Operating Committee has approved such Historical Fee Rate, the Participants shall be required to file with the SEC pursuant to Section 19(b) of the Exchange Act such Historical CAT Assessment to be charged to Industry Members calculated using such Historical Fee Rate. Industry Members will be required to pay such Historical CAT Assessment calculated using such Historical Fee Rate once such Historical CAT Assessment is in effect in accordance with Section 19(b) of the Exchange Act.

(B) Executed Equivalent Shares. For purposes of calculating each Historical CAT Assessment, executed equivalent shares in a transaction in Eligible Securities will be reasonably counted in the same manner as set forth in paragraph (a)(i)(B) of this Section 11.3.

(C) Historical CAT Costs. The Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs *reasonably* excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to

recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.

(D) Historical Recovery Period.

(I) The length of the Historical Recovery Period used in calculating each Historical Fee Rate will be reasonably established by the Operating Committee based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment; provided, however, no Historical Recovery Period used in calculating the Historical Fee Rate shall be less than 24 months or more than five years.

(II) Notwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected.

(E) Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities for Historical Recovery Period. The Operating Committee shall reasonably determine the projected total executed equivalent share volume of all transactions in Eligible Securities for each Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.

(ii) Past CAT Costs and Participants. Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of [Past] *Historical* CAT Costs *and such other additional Past CAT Costs as reasonably determined by the Operating Committee* will be paid by the cancellation of loans made *to* [by] the Company on a pro rata basis based on the outstanding loan amounts due under the loans. Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs.

(iii) Historical CAT Assessment for Industry Members.

(A) Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a fee for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.

(B) Historical CAT Assessment Fee Filings.

(I) Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.

(II) When the Participants file with the SEC pursuant to Section 19(b) of the Exchange Act a Historical CAT Assessment calculated using the Historical Fee Rate that the Operating Committee approved in accordance with paragraph (b) of this Section 11.3, such filing shall set forth (A) the Historical Fee Rate; (B) a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection. The information provided in this Section would be provided with sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.

(III) No Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.

(iv) Historical CAT Assessment Details.

(A) Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. *At a minimum, such details would include each CAT Executing Broker's executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.*

(B) For each Historical CAT Assessment, at a minimum, CAT LLC will make publicly available the aggregate executed equivalent share volume and corresponding aggregate fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions.

(c) The Operating Committee may establish any other fees ancillary to the operation of the CAT that it reasonably determines appropriate, including fees: (i) for the late or inaccurate reporting of information to the CAT; (ii) for correcting submitted information; and (iii) based on access and use of the CAT for regulatory and oversight purposes (and not including any reporting obligations).

(d) The Company shall make publicly available a schedule of effective fees and charges adopted pursuant to this Agreement as in effect from time to time. The Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semiannual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.

* * * * *

APPENDIX B

Fee Schedule

Consolidated Audit Trail Funding Fees for Participants

(a) CAT Fee. Each Participant shall pay the CAT Fee set forth in Section 11.3(a) of the CAT NMS Plan to Consolidated Audit Trail, LLC in the manner prescribed by Consolidated Audit Trail, LLC on a monthly basis based on the Participant's transactions in Eligible Securities in the prior month.

* * * * *

EXHIBIT C

CAT Fee Example for Illustrative Purposes Only

The following sets forth an example of a Historical CAT Assessment calculated under the Funding Proposal for illustrative purposes only. The example sets forth the Historical CAT Assessment that each CAT Executing Broker would pay related to CAT costs from prior to 2022 based on each CAT Executing Broker's transactions in December 2022. The first chart, entitled ''Calculation of Historical CAT Assessment,'' describes how the example fees are calculated. The second chart, entitled ''Aggregate Executed Equivalent Share Volume and Corresponding Aggregate Fee for December 2022 for Certain Categories,'' sets forth the aggregated amounts of

executed equivalent share volume and corresponding fee for December 2022 for the categories set forth in Proposed Section 11.3(b)(iv) of the CAT NMS Plan, which include (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions. The third chart, entitled ''Historical CAT Assessment for Each CAT Executing Broker,'' sets forth the example fees each CAT Executing Broker would pay based on its transactions in Eligible Securities in December 2022 in accordance with the parameters of the example.

Note that *Exhibit C* only provides an illustrative example of how the Funding Proposal would operate for informational purposes; the calculation of the actual Historical CAT Assessment for CAT costs from prior to 2022 would differ from this example in various ways. For example, the illustrative example calculates the Historical Fee Rate using the projected total executed equivalent share transactions in Eligible Securities for 2023–2024, rather than the projected executed equivalent share volume for the actual Historical Recovery Period, the dates of which will be determined upon approval of the Funding Proposal. In addition, the illustrative example calculates the Historical CAT Assessment based on a CEBB and CEBS's trading activity from December 2022, rather than trading activity during a relevant month in which the Historical CAT Assessment would be in effect. Moreover, the illustrative example, among other things, calculates the executed equivalent shares for each executed contract for a transaction in Listed Options using a 100 executed equivalent share multiplier, instead of the specific multiplier applicable to each Listed Option; it uses a simple projection calculation of doubling the total executed equivalent share volume for 2022 (rather than a projection that considers volume growth and other relevant factors); and it may include cancelled trades or trades that were later corrected.[159]

CALCULATION OF HISTORICAL CAT ASSESSMENT

Item	Value	Calculation	Proposed plan provision
Actual Total Executed Equivalent Share Volume of Transactions in Eligible Securities for 2022.	4,039,821,841,560.31 Executed Equivalent Shares.	Calculated using actual transactions in Eligible Securities for 2022.	Proposed Sections 11.3(a)(i)(B) and 11.3(b)(i)(B).
Historical Recovery Period	2 years	Length between 2 and 5 years as determined by Operating Committee.	Proposed Section 11.3(b)(i)(D)(I).
Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities for 2023–2024.	8,079,643,683,120.62 Executed Equivalent Shares.	2*4,039,821,841,560.31 Executed Equivalent Shares (Actual Executed Equivalent Share Volume of Transactions in Eligible Securities for 2022 multiplied by two).	Proposed Section 11.3(b)(i)(E).
Historical CAT Costs for Pre-2022	$337,688,610	$401,312,909–$63,624,299 (Past CAT Costs for pre-2022 minus CAT Costs excluded from Past CAT Costs for pre-2022).	Proposed Section 11.3(b)(i)(C).
Historical Fee Rate	$0.0000417950 per Executed Equivalent Share.	$337,688,610/8,079,643,683,120.62 (Historical CAT Costs for pre-2022 divided by Projected Total Executed Equivalent Share Volume of Transactions in Eligible Securities for 2023–2024).	Proposed Section 11.3(b)(i)(A).
Historical CAT Assessment for CAT Executing Brokers for pre-2022 Historical CAT Costs for December 2022.	See ''Historical Fee Assessment for Each CAT Executing Broker'' chart below.	Executed Equivalent Share Volume of Transactions in Eligible Securities for December 2022 for each CAT Executing Broker multiplied by Historical Fee Rate multiplied by one-third.[160]	Proposed Section 11.3(b)(iii)(A).
Total Amount to be Collected via Historical CAT Assessment for pre-2022 Historical CAT Costs.	$225,125,740	2/3 * $337,688,610 (Two-thirds of Historical CAT Costs).	Proposed Sections 11.3(b)(i)(C) and 11.3(b)(iii)(A).

AGGREGATE EXECUTED EQUIVALENT SHARE VOLUME AND CORRESPONDING AGGREGATE FEE FOR DECEMBER 2022 FOR CERTAIN CATEGORIES

Category of transaction	Aggregate executed equivalent share volume for December 2022	Aggregate historical CAT assessment for December 2022 (in dollars)
Listed Options	171,596,408,600.00	2,390,623.27
NMS Stocks	455,096,327,128.00	6,340,248.50
OTC Equity Securities	2,835,446,929.62	39,502.49
Buy-Side Transactions	314,765,626,228.81	4,385,208.51
Sell-Side Transactions	314,762,556,428.81	4,385,165.75

[159] Section A.1.d of this filing discusses how cancellations and corrections would be addressed under the Funding Proposal.

[160] Because the Historical Fee Rate is multiplied by one-third in calculating the Historical CAT Assessment for the example, CAT Executing Brokers would pay $0.00001393167 per executed equivalent share (that is, $0.0000417950 per executed equivalent share multiplied by one-third).

AGGREGATE EXECUTED EQUIVALENT SHARE VOLUME AND CORRESPONDING AGGREGATE FEE FOR DECEMBER 2022 FOR CERTAIN CATEGORIES—Continued

Category of transaction	Aggregate executed equivalent share volume for December 2022	Aggregate historical CAT assessment for December 2022 (in dollars)
Executed on BOX	11,476,557,600	159,887.53
Executed on Cboe BYX	5,010,889,784	69,810.03
Executed on Cboe BZX	28,387,794,900	395,489.18
Executed on Cboe EDGA	5,987,423,230	83,414.76
Executed on Cboe EDGX	35,456,933,206	493,974.03
Executed on Cboe C2	7,093,009,200	98,817.41
Executed on Cboe	31,832,709,200	443,482.57
Executed on IEX	10,534,111,236	146,757.68
Executed on LTSE	14,709,130	204.92
Executed on MEMX	13,471,198,984	187,676.20
Executed on MIAX	9,473,736,600	131,984.90
Executed on MIAX Emerald	4,451,989,200	62,023.61
Executed on MIAX PEARL	13,382,643,690	186,442.48
Executed on Nasdaq BX	7,033,829,520	97,992.94
Executed on Nasdaq GEMX	2,750,988,600	38,325.85
Executed on Nasdaq ISE	8,771,296,800	122,198.75
Executed on Nasdaq MRX	2,373,050,600	33,060.54
Executed on Nasdaq PHLX	22,234,997,366	309,770.48
Executed on Nasdaq	84,953,835,448	1,183,548.17
Executed on NYSE	46,589,923,124	649,075.09
Executed on NYSE American	12,939,380,646	180,267.09
Executed on NYSE Arca	57,732,682,568	804,312.26
Executed on NYSE Chicago	1,851,452,536	25,793.81
Executed on NYSE National	2,482,827,634	34,589.92
Executed Otherwise than on an Exchange	203,240,211,856	2,831,474.07

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
1	86,112,198,133.20	1,199,686.09
2	38,481,541,952.55	536,111.86
3	38,393,700,002.03	534,888.08
4	38,459,064,211.23	535,798.71
5	27,384,672,407.15	381,514.02
6	23,625,876,388.24	329,147.74
7	22,953,981,909.23	319,787.13
8	17,620,665,100.45	245,485.16
9	17,628,940,532.54	245,600.45
10	20,031,215,101.53	279,068.13
11	16,301,270,280.00	227,103.80
12	19,404,461,254.15	270,336.41
13	11,441,178,404.00	159,394.64
14	12,179,858,717.98	169,685.68
15	12,076,770,928.00	168,249.50
16	11,623,298,048.64	161,931.87
17	9,955,221,266.53	138,692.78
18	10,285,573,046.70	143,295.13
19	10,481,313,179.31	146,022.12
20	9,456,042,067.81	131,738.39
21	7,969,275,763.65	111,025.26
22	5,853,036,941.30	81,542.54
23	9,044,202,748.00	126,000.78
24	8,129,937,025.67	113,263.54
25	9,466,559,704.00	131,884.92
26	8,098,701,385.00	112,828.38
27	6,220,173,476.92	86,657.36
28	4,940,607,300.00	68,830.87
29	5,496,193,202.99	76,571.11
30	4,183,004,192.80	58,276.20
31	3,748,760,073.00	52,226.46
32	3,930,225,757.70	54,754.58
33	2,926,196,700.00	40,766.79
34	4,040,159,976.45	56,286.15

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
35	2,462,962,342.00	34,313.16
36	3,255,347,005.69	45,352.40
37	1,795,144,783.11	25,009.35
38	1,533,939,983.00	21,370.33
39	2,462,084,862.71	34,300.94
40	2,226,415,053.41	31,017.66
41	1,847,364,910.34	25,736.86
42	2,416,691,618.00	33,668.53
43	1,232,981,799.00	17,177.49
44	2,181,268,648.12	30,388.70
45	2,131,136,467.07	29,690.27
46	1,099,857,600.00	15,322.85
47	1,469,689,428.23	20,475.22
48	2,168,992,900.00	30,217.68
49	1,496,908,444.00	20,854.42
50	1,534,294,028.00	21,375.27
51	65,606,592.00	914.01
52	1,735,293,007.06	24,175.52
53	1,307,878,500.00	18,220.92
54	1,178,185,898.26	16,414.09
55	1,430,077,857.02	19,923.36
56	1,151,205,287.63	16,038.20
57	1,409,986,241.50	19,643.45
58	1,103,808,027.33	15,377.88
59	1,029,656,664.02	14,344.83
60	857,333,700.00	11,944.08
61	961,305,300.00	13,392.58
62	1,867,947,700.00	26,023.62
63	1,039,246,045.38	14,478.43
64	1,101,469,802.00	15,345.31
65	562,430,300.00	7,835.59
66	733,501,357.00	10,218.89
67	877,224,476.00	12,221.20
68.		
69	829,161,852.00	11,551.60
70	966,607,368.00	13,466.45
71	821,501,400.00	11,444.88
72	677,405,637.00	9,437.39
73	1,015,740,702.00	14,150.96
74	522,418,991.27	7,278.17
75	989,301,187.72	13,782.61
76	773,642,309.00	10,778.12
77.		
78	590,057,809.16	8,220.49
79	737,007,679.37	10,267.74
80	536,705,303.00	7,477.20
81	767,854,826.21	10,697.49
82	635,942,409.58	8,859.74
83	864,089,556.95	12,038.20
84	620,860,189.00	8,649.61
85	700,713,844.00	9,762.11
86	727,102,431.00	10,129.75
87	556,678,644.00	7,755.46
88	581,059,177.09	8,095.12
89	559,881,462.22	7,800.08
90	483,502,237.48	6,735.99
91	413,725,788.00	5,763.89
92	610,245,108.09	8,501.73
93	405,594,302.00	5,650.60
94	353,080,033.04	4,918.99
95	550,986,110.00	7,676.15
96	522,200,254.96	7,275.12
97	452,909,875.00	6,309.79
98	314,934,600.00	4,387.56
99	1,172,981,298.00	16,341.58
100	418,591,392.71	5,831.67
101	56,226,707.15	783.33
102	444,528,797.00	6,193.03

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
103	243,033,674.00	3,385.86
104	826,825,093.31	11,519.05
105	363,355,742.00	5,062.15
106	319,206,742.76	4,447.08
107	234,606,209.64	3,268.45
108	714,493,322.00	9,954.08
109	313,455,910.25	4,366.96
110	1,031,910,466.00	14,376.23
111	258,090,705.06	3,595.63
112	472,580,692.79	6,583.83
113	431,793,880.31	6,015.61
114	337,914,803.56	4,707.72
115	339,736,815.43	4,733.10
116	909,158,616.00	12,666.09
117	290,642,115.00	4,049.13
118	347,421,063.79	4,840.15
119	350,667,538.15	4,885.38
120	318,322,800.00	4,434.77
121	263,757,425.20	3,674.58
122.		
123	375,530,471.00	5,231.76
124	53,557,200.00	746.14
125.		
126	283,825,411.16	3,954.16
127	143,392,400.00	1,997.69
128	217,718,090.88	3,033.17
129	165,915,140.89	2,311.47
130	457,613,070.46	6,375.31
131	251,132,793.81	3,498.70
132	219,112,442.00	3,052.60
133	43,938,745.15	612.14
134	330,967,497.01	4,610.93
135	188,838,809.00	2,630.84
136	227,575,404.47	3,170.50
137	206,478,844.94	2,876.59
138.		
139	292,467,800.00	4,074.56
140	165,645,008.32	2,307.71
141	214,739,622.63	2,991.68
142	185,617,991.19	2,585.97
143	165,469,188.00	2,305.26
144	5,019,600.00	69.93
145	956,355,049.08	13,323.62
146	64,960,719.00	905.01
147	289,141,549.00	4,028.22
148	147,498,787.28	2,054.90
149	158,995,017.79	2,215.06
150	122,676,294.48	1,709.08
151	136,312,675.96	1,899.06
152	27,284,757.00	380.12
153	352,462,000.00	4,910.38
154	126,212,114.45	1,758.34
155.		
156	128,125,560.32	1,785.00
157	60,988,464.36	849.67
158	131,730,011.56	1,835.22
159	74,526,683.59	1,038.28
160	147,853,117.00	2,059.84
161	113,883,427.93	1,586.59
162.		
163	116,699,318.87	1,625.82
164	129,812,902.58	1,808.51
165	106,768,335.00	1,487.46
166	140,139,530.00	1,952.38
167	82,905,120.00	1,155.01
168	99,813,775.33	1,390.57
169	61,257,698.00	853.42
170	265,568,648.00	3,699.81

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
171	98,014,634.68	1,365.51
172	95,296,632.53	1,327.64
173	52,272,295.77	728.24
174	38,307,460.47	533.69
175	84,787,219.45	1,181.23
176	79,498,966.79	1,107.55
177	55,374,006.21	771.45
178	156,404,961.23	2,178.98
179	60,642,356.86	844.85
180	118,133,629.00	1,645.80
181	76,062,700.00	1,059.68
182	248,176,128.68	3,457.51
183	79,008,100.00	1,100.71
184	85,278,937.00	1,188.08
185	70,228,707.00	978.40
186	62,833,390.18	875.37
187	41,480,726.45	577.90
188	176,929,414.00	2,464.92
189	29,253,925.81	407.56
190	105,263,657.06	1,466.50
191	77,787,800.00	1,083.71
192	68,984,712.00	961.07
193	61,335,825.68	854.51
194	67,297,274.77	937.56
195	51,129,783.08	712.32
196.		
197	68,089,568.19	948.60
198	40,730,576.79	567.44
199	39,525,291.39	550.65
200	91,093,000.00	1,269.08
201	57,676,030.00	803.52
202	6,831,789.24	95.18
203	316,923,604.92	4,415.27
204	56,604,000.00	788.59
205	33,836,692.76	471.40
206	3,686,360.00	51.36
207	87,223,619.59	1,215.17
208	22,659,425.86	315.68
209	36,155,445.78	503.71
210	27,633,449.00	384.98
211	3,789,049.10	52.79
212.		
213.		
214	11,802,608.52	164.43
215	39,707,587.00	553.19
216	69,601,570.00	969.67
217	26,765,942.82	372.89
218	32,246,115.00	449.24
219	5,604,885.00	78.09
220	15,282,378.75	212.91
221	21,777,071.28	303.39
222	19,782,551.00	275.60
223	25,665,436.26	357.56
224	24,403,825.19	339.99
225	69,596,229.05	969.59
226	15,677,771.93	218.42
227	25,267,934.00	352.02
228	22,258,692.00	310.10
229	10,262,505.79	142.97
230.		
231	18,989,070.64	264.55
232	14,408,226.00	200.73
233	18,945,600.00	263.94
234	13,376,162.82	186.35
235	20,807,919.37	289.89
236	17,593,056.07	245.10
237	15,126,721.74	210.74
238	13,674,994.00	190.52

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
239	6,144,297.00	85.60
240	14,525,850.31	202.37
241	38,208,766.82	532.31
242	14,895,098.80	207.51
243	11,078,635.00	154.34
244	10,226,692.01	142.47
245	11,521,371.11	160.51
246	11,162,808.43	155.52
247	18,083,706.64	251.94
248	15,739,833.71	219.28
249	9,587,210.86	133.57
250	18,980,980.00	264.44
251	5,974,342.18	83.23
252	18,009,063.00	250.90
253	12,371,171.00	172.35
254	16,961,858.62	236.31
255	12,751,377.12	177.65
256	7,665,867.62	106.80
257	14,798,978.38	206.17
258	11,422,776.00	159.14
259	9,486,103.23	132.16
260	18,142,315.00	252.75
261	13,643,800.00	190.08
262.		
263	21,333,324.60	297.21
264	14,024,523.06	195.38
265	9,609,378.96	133.87
266	3,764,664.51	52.45
267	9,263,917.20	129.06
268	13,514,542.97	188.28
269	7,063,688.49	98.41
270	9,204,383.57	128.23
271.		
272	4,165,675.24	58.03
273	8,795,482.50	122.54
274.		
275	7,151,874.00	99.64
276	2,656,709.93	37.01
277.		
278	11,041,371.25	153.82
279	9,618,241.51	134.00
280	10,409,870.33	145.03
281	2,381,247.97	33.17
282	79,562,536.00	1,108.44
283	5,028,862.00	70.06
284	3,583,471.00	49.92
285	6,047,686.70	84.25
286	10,121,031.10	141.00
287.		
288	4,562,944.01	63.57
289	1,995,032.12	27.79
290	3,603,016.17	50.20
291	49,058,772.00	683.47
292	5,326,788.04	74.21
293	5,199,894.30	72.44
294.		
295	7,396,224.93	103.04
296	8,377,144.03	116.71
297	10,426,990.00	145.27
298	4,328,332.63	60.30
299.		
300	22,059,594.00	307.33
301	2,719,871.36	37.89
302.		
303	9,336,370.70	130.07
304	8,250,582.32	114.94
305	11,309,704.54	157.56
306	2,825,954.04	39.37

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
307	3,015,453.22	42.01
308	2,985,881.79	41.60
309	3,550,440.79	49.46
310	3,796,542.00	52.89
311	681,600.00	9.50
312	6,701,908.00	93.37
313	7,515,141.47	104.70
314	1,813,867.00	25.27
315	25,693,200.00	357.95
316	8,571,418.81	119.41
317	4,618,323.00	64.34
318	2,871,231.32	40.00
319	1,312,921.00	18.29
320	3,167,425.85	44.13
321	101,019.48	1.41
322	3,859,688.00	53.77
323	4,632,446.85	64.54
324.		
325	2,755,282.00	38.39
326	3,449,977.69	48.06
327	2,682,536.34	37.37
328	6,303,034.00	87.81
329	1,464,170.44	20.40
330	2,405,671.00	33.51
331	3,837,456.05	53.46
332	2,098,139.00	29.23
333	927,380.00	12.92
334.		
335	453,254.09	6.31
336	8,591,832.75	119.70
337	3,385,354.11	47.16
338.		
339	1,634,758.00	22.77
340	935,226.00	13.03
341	823,172.38	11.47
342	7,230,086.55	100.73
343	2,994,432.00	41.72
344	5,133,362.77	71.52
345.		
346	1,744,000.00	24.30
347.		
348	5,993,119.17	83.49
349.		
350	652,857.00	9.10
351	424,927.00	5.92
352	953,388.28	13.28
353.		
354	2,291,065.00	31.92
355	3,155,865.00	43.97
356	374,015.00	5.21
357	1,665,732.44	23.21
358	128,500.00	1.79
359	401,400.00	5.59
360	830,021.00	11.56
361	910,747.00	12.69
362	1,232,435.70	17.17
363	14,888,100.00	207.42
364	1,702,250.00	23.72
365	3,676,612.12	51.22
366	919,741.00	12.81
367	3,712,051.51	51.72
368	635,368.00	8.85
369	447,894.00	6.24
370	2,272,345.00	31.66
371	1,374,837.10	19.15
372	1,552,729.36	21.63
373	2,180,116.97	30.37
374.		

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
375	798,527.92	11.12
376.		
377	1,399,199.54	19.49
378	4,536,762.00	63.20
379	1,061,788.00	14.79
380	2,827,862.97	39.40
381	1,053,097.00	14.67
382	939,300.00	13.09
383	254.00	0.00
384	1,088,114.00	15.16
385	773,060.00	10.77
386	387,116.56	5.39
387	873,812.55	12.17
388	665,749.00	9.27
389	795,558.50	11.08
390	2,597,253.00	36.18
391	948,046.00	13.21
392	1,107,547.00	15.43
393	3,654,035.00	50.91
394	521,279.00	7.26
395	410,769.00	5.72
396	2,622,813.00	36.54
397	554,541.44	7.73
398	179,200.00	2.50
399	841,840.24	11.73
400	523,709.00	7.30
401.		
402.		
403	462,520.50	6.44
404	379,314.02	5.28
405	217,857.00	3.04
406	513,184.27	7.15
407	130,200.00	1.81
408	480,937.70	6.70
409	658,680.86	9.18
410	1,230,112.99	17.14
411	5,625,111.00	78.37
412	620,200.00	8.64
413	3,879,491.00	54.05
414	852,915.67	11.88
415	468,524.00	6.53
416	338,139.73	4.71
417	86,853.84	1.21
418	382,210.00	5.32
419.		
420	183,173.25	2.55
421	655,954.75	9.14
422	165,639.00	2.31
423.		
424	84,016.00	1.17
425.		
426	220,899.00	3.08
427.		
428.		
429	38,100.00	0.53
430	78,640.00	1.10
431	212,985.00	2.97
432	79,334.00	1.11
433.		
434	22,991.02	0.32
435	8,120.00	0.11
436	44,988.45	0.63
437	81,718.00	1.14
438	91,513.00	1.27
439	234,239.00	3.26
440	509,039.50	7.09
441.		
442	28,633.00	0.40

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
443.		
444	7,497.00	0.10
445	69,548.86	0.97
446	1,243,936.05	17.33
447	111,283.00	1.55
448.		
449	435,740.00	6.07
450.		
451	1,907,630.00	26.58
452.		
453	94,505.19	1.32
454	500,187.00	6.97
455	189,004.00	2.63
456.		
457	5,154.00	0.07
458.		
459.		
460.		
461	426.90	0.01
462	1,065.00	0.01
463	150,058.61	2.09
464	282,990.00	3.94
465	16,625.00	0.23
466.		
467.		
468	139,267.00	1.94
469	49,367.91	0.69
470	330,964.00	4.61
471	6,532.00	0.09
472.		
473.		
474	9.00	0.00
475	34,000.00	0.47
476	15,708.00	0.22
477	14,355.00	0.20
478	151,323.00	2.11
479	6,090.28	0.08
480	67,340.20	0.94
481	16,356.00	0.23
482	37.00	0.00
483	94,762.08	1.32
484	16,191.00	0.23
485	30,000.00	0.42
486	17,679.82	0.25
487	3,762.52	0.05
488.		
489	111,812.00	1.56
490.		
491	30,513.00	0.43
492	86,676.00	1.21
493.		
494	500.00	0.01
495	98,319.74	1.37
496	36,465.84	0.51
497	20,653.01	0.29
498	29,603.84	0.41
499.		
500	4,165.29	0.06
501	7,100.00	0.10
502.		
503.		
504	5,582.00	0.08
505.		
506	38,770.00	0.54
507	18,855.43	0.26
508.		
509	9,817.02	0.14
510	900.00	0.01

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
511	4,472.75	0.06
512	266.00	0.00
513	5,298.16	0.07
514.		
515	169.00	0.00
516.		
517	4,646.78	0.06
518	4,646.78	0.06
519	6,417.00	0.09
520	257.00	0.00
521	13,387.78	0.19
522	1,313.00	0.02
523.		
524	23,714.00	0.33
525	4,488.00	0.06
526	2,787.00	0.04
527	1,200.00	0.02
528.		
529	1,947.72	0.03
530	2,360.20	0.03
531	200.00	0.00
532	15,261.00	0.21
533	267.00	0.00
534.		
535	2.00	0.00
536.		
537	1,895.46	0.03
538	1,369.04	0.02
539	1,047.00	0.01
540	1,507.00	0.02
541.		
542	2,183.01	0.03
543	973.00	0.01
544.		
545	760.01	0.01
546	2,774.00	0.04
547	45.00	0.00
548	747.00	0.01
549.		
550	799.00	0.01
551	257.00	0.00
552	207.00	0.00
553.		
554	6.00	0.00
555.		
556	402.00	0.01
557.		
558.		
559	164.00	0.00
560.		
561.		
562.		
563.		
564.		
565	118.00	0.00
566	5.00	0.00
567.		
568	68.00	0.00
569	75.00	0.00
570	15.00	0.00
571	34.00	0.00
572.		
573	9.00	0.00
574.		
575	85.00	0.00
576	75.00	0.00
577.		
578.		

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
579	54.00	0.00
580	26.00	0.00
581	34.00	0.00
582	423.55	0.01
583	6.00	0.00
584.		
585	91.00	0.00
586	43.00	0.00
587.		
588	25.00	0.00
589.		
590	16.00	0.00
591	20.00	0.00
592	31.00	0.00
593.		
594	25.00	0.00
595.		
596	29.00	0.00
597	22.00	0.00
598.		
599.		
600	3.00	0.00
601	26.00	0.00
602.		
603.		
604	55.02	0.00
605	20.00	0.00
606.		
607	18.00	0.00
608.		
609.		
610	18.00	0.00
611.		
612	27.00	0.00
613.		
614.		
615	14.00	0.00
616	8.00	0.00
617	18.00	0.00
618.		
619.		
620.		
621.		
622	16.00	0.00
623	3.00	0.00
624	1.00	0.00
625	7.00	0.00
626.		
627	6.00	0.00
628.		
629	8.00	0.00
630	11.00	0.00
631	9.00	0.00
632.		
633	2.26	0.00
634	10.00	0.00
635.		
636	8.00	0.00
637	2.00	0.00
638.		
639	4.00	0.00
640	15.00	0.00
641.		
642.		
643	6.00	0.00
644	1.00	0.00
645.		
646	2.00	0.00

HISTORICAL FEE ASSESSMENT FOR EACH CAT EXECUTING BROKER [161]—Continued

CAT executing broker	Executed equivalent share volume of transactions in eligible securities for December 2022	Historical CAT assessment for December 2022 (in dollars)
647	1.00	0.00
648	2.00	0.00
649	3.00	0.00
650.		
651.		
652.		
653.		
654.		
655	4.00	0.00
656	5.00	0.00
657.		
658.		
659	1.00	0.00
660.		
661	3.00	0.00
662	8.00	0.00
663.		
664.		
665.		
666.		
667.		
668.		
669.		
670.		
671.		
672	1.00	0.00
673.		
674.		
675.		
676.		
677.		
678.		
679	1.00	0.00
680.		
681.		
682.		
683.		

[FR Doc. 2023–05690 Filed 3–20–23; 8:45 am]

BILLING CODE 8011–01–P

[161] CAT LLC recognizes that an Industry Member's knowledge of its own fees in the illustrative example would be helpful in analyzing the Funding Proposal. Accordingly, if a CAT Executing Broker is interested in learning which anonymized CAT Executing Broker in the illustrative example represents its volume and fees, the CAT Executing Broker may contact the FINRA CAT Helpdesk by email at *help@finracat.com.* Accordingly, subject to verification of the identity of the requesting party as an authorized representative of the relevant Industry Member, the Helpdesk will provide the authorized representative of the CAT Executing Broker with the number of the applicable anonymized CAT Executing Broker in *Exhibit C.* In addition, upon request, the Helpdesk also will provide the CAT Executing Broker with a breakdown of its executed equivalent share volume and corresponding fee by (1) Listed Options, NMS Stocks and OTC Equity Securities, (2) by transactions executed on each exchange and transactions executed otherwise than on an exchange, and (3) by buy-side transactions and sell-side transactions. CAT LLC notes that the calculations provided in the table may reflect minor variations due to rounding.

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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**.

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